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CHILD ABUSE

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

THE TREATMENT OF CHILD ABUSE ALLEGATIONS AND VICTIMS IN THE JUDICIAL AND VICTIMS SERVICES SYSTEM

MAY 16, 1989

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CHILD ABUSE

TUESDAY, MAY 16, 1989

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:09 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Joseph R. Biden, Jr., chairman of the committee, presiding.

Also present: Senators Heflin, Thurmond, Hatch, Grassley and Specter.

OPENING STATEMENT OF CHAIRMAN JOSEPH R. BIDEN, JR.

The **CHAIRMAN**. The hearing will please come to order.

Welcome, gentlemen. Senator Reid, it is good to have you before the committee. It is also a distinct pleasure, Congressman, to have you to come over to, as we say, the other body. I know you never refer to us as the "Senate." In private, we will tell you how we refer to you all. [Laughter.]

No, really. It is a great pleasure to have you here.

In order to facilitate your busy schedules, I will withhold my opening statement until before the next series of witnesses that we have. Let me just open by saying that the subject of today's hearings that are part of a larger problem, although the most moving and compelling part of the problem. That is, I think we have paid much too little attention to the rights of the victims in the criminal justice system. The victims in the system are those who not only are physically brutalized by criminals, but are also victimized by court proceedings on many occasions.

I spent a good deal of time earlier in my career here trying to deal with the problem of how women who were victims of rape became victims of the court system as well. And I think we have a situation here that all would acknowledge raises a delicate and difficult question: how to fairly balance the rights of individuals within our system, the accused as well as the victims. We face a particularly pathetic and compelling series of concerns in cases involving young children who have been sexually and physically abused. They often must come into a court system that, although fair, is so distant and far from their understanding and knowledge and ability to handle that it further complicates their problems.

I welcome you both. I will at a later time speak to my more formal statement. But with that, in the interest of your busy schedules, Senator Reid, I welcome you, and I would ask if you have an opening statement; then, Congressman, if you have one; and then we will begin questioning.

STATEMENT OF HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator REID. Thank you very much, Mr. Chairman.

I commend you for conducting this hearing and point out to you the awesome power that you hold as chairman of this committee. It has tremendous impact on everything we do in this country and on the subject about which I am to speak. That is the tremendous problem of child abuse.

I appreciate very much your invitation and that of your staff to testify on the Federal Child Victims' Bill of Rights introduced this session by myself and my friend and former colleague, Congressman Mike DeWine.

A few years ago, I was astounded to read Justice Department findings that 90 percent of all child abuse cases do not go forward to prosecution.

Children rarely get to the courtroom presumably because we adults do not want them to get hurt. We do not want them to be victimized again—this time by the judicial process.

But, Mr. Chairman, that logic is seriously flawed. We are doing immeasurable harm to these children by not affording them the opportunity to explain what happened to them and who, in effect, did it. We do no justice by allowing those accused of committing atrocities against children to go free and unchallenged.

Too often, we think we are protecting the child victims' welfare by keeping them from the judicial system. We merely say, "Go back to your home or to your day care center"—sometimes to places where the alleged abuse occurred.

Children are the victims, but our very attitudes toward them victimizes them further. We must change these attitudes, and doing so means revamping the way that child victims are treated within our system of justice.

The Victims' Bill of Rights establishes a Federal Child Victims' Bill of Right.

Our treatment of child victims is a classic case of society showing more concern about alleged criminals than about victims. We have a separate juvenile court system for children accused of committing crimes. We recognize that these children should be treated differently than adults. But when children are the victims, we throw them into our adult court system without any special treatment.

That is wrong, and the Child Victims' Bill of Rights seeks to remedy that problem.

The first and critical step is to identify child victims before it is too late. The proposed bill of rights requires certain professionals to identify children who they suspect are victims of child abuse and neglect. In my State of Nevada, a pending illustrates the need for adults to pay attention to warning signs. Despite numerous reports and investigations of abuse inflicted by two parents upon their 4-year-old daughter, the authorities kept backing off the case, saying they did not have enough "hard" evidence. The 4-year-old was eventually killed after her head was repeatedly banged against the floor. Her parents are now accused of murder.

Mr. Chairman, experts estimate that, nationwide, as many as 5,000 children die each year from child abuse. That, of course, is intolerable. Five thousand children die each year from child abuse.

Even if we help identify child victims of abuse, they are then confronted with a legal system that betrays them at every turn.

The Child Victims' Bill of Rights establishes procedures to facilitate testimony of children in court, and provides alternatives that make the judicial process a less threatening ordeal. For example, my proposed legislation would allow children to use anatomical dolls to describe acts of abuse.

The legislation would also allow children to testify outside the courtroom and by way of recorded deposition. Removed from the terror of the courtroom, the child is free from fear of facing the person being accused.

The bill also allows the court to approve a child attendant—someone who can protect the child's emotional needs.

Mr. Chairman, I can remember when I was practicing law in domestic relations, it was an innovation when the court appointed someone to represent the child. The father was represented; the mother was represented by an attorney. And, uniquely, the court started appointing someone to represent the child. You would be surprised how much better the proceedings went when the child had an advocate for them.

But in this instance, appointing a child's attendant is an investment in the future of the child and our society.

The **Chairman**. The child's attendant, as opposed to a counsel.

Senator **Reid**. That is right. Yes. But the point being that, uniquely, back in my civil litigation days, someone was appointed by the court to represent that child. And it really worked well because it made the parents become less advocates in attempting to use the child as some kind of a pawn.

Mr. Chairman, on any given day, you can find a newspaper account of a crime which attributes some violent act to the suspect's childhood, whether it be a pattern of abuse or a particular traumatic experience that went unresolved.

Although explanations for why something happened are often conjecture, surely there is some truth to a person's past shaping his future.

For those children who have been abused, we cannot ignore them or shuttle them through a legal maze that will only exacerbate their pain. By doing so, we are risking their future well-being and the well-being of those they come into contact with as they grow older, and the scars remain intact.

Time does not heal all wounds, as exemplified by the scores of child abuse victims who still suffer years and years after the incidents of abuse.

But these suffering victims are, in a sense, lucky. They can tell us their story. Thousands of children like them each year are not as lucky. They cannot be here to testify as to the rights they so desperately needed and the understanding they never received.

On behalf of these children, and the unfortunate thousands that will be subject to abuse year after year, Congressman DeWine and I have introduced this legislation and intend to continue pushing for its passage.

Mr. Chairman, in closing, I would like to share the thoughts of a man who has demonstrated to those of us in Washington and around the country an honest candor and a compassion toward Americans that few public figures can measure up to. He is our outgoing Surgeon General, Dr. C. Everett Koop.

He has a reputation for always telling the truth, even though we sometimes do not want to hear the truth or accept the truth. But his warnings are real and cannot be ignored.

Dr. Koop warns us that "the number of children who are not loved and who are not safe constitutes one of the major health problems that we face in our country today."

Therefore, Mr. Chairman, the imperative to act is upon us.

[The prepared statement of Senator Reid follows:]

TESTIMONY OF
SENATOR HARRY REID

RE: PROPOSED FEDERAL
CHILD VICTIMS' BILL OF RIGHTS

SUBMITTED TO THE
SENATE COMMITTEE ON JUDICIARY

MAY 16, 1989

Mr. Chairman, I commend you for conducting a hearing on the tremendous problem of child abuse, and appreciate your invitation to testify on the Federal Child Victims' Bill of Rights introduced this session by myself and Congressman Mike DeWine.

A few years ago, I was astounded to read Justice Department findings that 90 percent of all child abuse cases do not go forward to prosecution.

Children rarely get to the courtroom presumably because we adults don't want them to get hurt. We don't want them to be victimized again – this time through the judicial process.

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Too often, we think we are protecting the child victims' welfare by keeping them from the judicial system. We merely say, "go back to your home or to your day care center" – to places where the alleged abuse may have occurred.

Children are the victims, but our very attitudes toward them victimizes them further. We must change these attitudes, and doing so means revamping the way that child victims are treated within our system of justice.

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That is wrong, and the Child Victims Bill of Rights seeks to remedy that problem.

The first, and critical step, is to identify child victims before it is too late. The proposed bill of rights requires certain professionals to identify children who they suspect are victims of abuse and neglect. In my state of Nevada, a pending trial illustrates the need for adults to pay attention to warning signs. Despite numerous reports and investigations of abuse inflicted by two parents upon their four-year old daughter, the authorities kept backing off the case, saying they didn't have enough "hard" evidence. The four-year old was eventually killed after her head was repeatedly banged against the floor. Her parents are accused of murder.

Experts estimate that, nationwide, anywhere from 2,000 to 5,000 children die each year from child abuse. Such figures are intolerable.

Even if we help identify child victims of abuse, they are then confronted with a legal system that betrays them at every turn.

The Child Victims' Bill of Rights establishes procedures to facilitate testimony of children in court, and provides alternatives that make the judicial process a less threatening ordeal. For example, my proposed legislation would allow children to use anatomical dolls to describe acts of abuse.

The legislation would also allow children to testify outside the courtroom and by way of recorded deposition. Removed from the terror of the courtroom, the child is free from the fear of facing the person being accused.

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For those children who have been abused, we cannot ignore them, or shuttle them through a legal maze that will only exacerbate their pain. By doing so, we are risking their future well-being, and the well-being of those they come into contact with as they grow older and the scars remain intact.

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On behalf of these children, and the unfortunate thousands that will be subject to abuse year after year -- Congressman DeWine and I have introduced this legislation and intend to continue pushing for its passage.

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Dr. Koop warns us that "the number of children who are not loved and who are not safe constitutes one of the major health problems that we face in our country today."

The imperative to act is upon us.

The CHAIRMAN. Thank you very much, Senator.

Congressman.

STATEMENT OF HON. MICHAEL DeWINE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. DEWINE. Thank you very much, Mr. Chairman.

I want to thank you and congratulate you for holding these hearings on this very, very important issue.

I started my political career when a young man as a county prosecuting attorney. I think one of the things that most amazed me, surprised me, shocked me, was the number of child abuse cases that we were dealing with in our office. But even more frightening, I think, is the fact that we knew at the time, and every prosecutor today knows, that we only see a small portion of the child abuse cases that are actually occurring. Equally shocking, even more shocking, was the number of sexual child abuse cases that I saw as a county prosecuting attorney.

There was a pattern to these crimes. When we got into them and began to investigate, we almost inevitably found that they had been going on for years—years and years and years—and had not been reported. We also found when we investigated these cases that there were people who knew, who should have known, who had reason to know, and who allowed it to continue year after year after year.

This is a major problem in this country. No one has any good statistics. There are only guesses. But I can tell you based upon my experience as a prosecutor—and I know other members of your committee have had the same experiences and seen it firsthand—that we just see a small fraction. The statistics just show a small fraction of the actual incidents of child abuse, a small fraction of the incidents of sexual child abuse. And we should make no mistake about it. It cuts across the entire economic strata of society. I prosecuted individuals who had no money; I prosecuted, I remember one particular case, the vice president of a major corporation who had been engaging in sexual child abuse of his children for years and years and years. So, in any area of the country, in any part of our economic strata is exists.

What this bill does is try to deal with this problem. Number one, it requires reporting. Number two, it creates a more humane atmosphere, as Senator Reid indicated, in the courtroom. To an adult who is not a lawyer, who does not go into the courtroom every day, the courtroom even for an adult is many times a very sterile, very hostile environment. Imagine what it is for an 8-year-old or 9-year-old or 10-year-old child who enters that courtroom for the first time. This bill is more humane. It makes it easier for that child to get through a very, very tough process.

The bill also, as Senator Reid indicates, makes it more likely that we will have justice in the end. Many, many cases every year are not taken through to trial, are taken out either by a prosecutor or by a judge simply because it is too difficult, too tough on the child to go through the judicial process. This bill makes it more likely that a case will proceed and that ultimately true justice will be done.

What it does, Mr. Chairman, is to give the trial court the tools to make it a more humane atmosphere, to make it easier for the child, and to ensure that justice will be done. Frankly, it is my personal opinion that some of the things that are outlined in this bill, some of these tools, are really already available to the trial court judge. But, as you know, many times trial court judges are hesitant—and understandably so—about being overruled on appeal. And so if in doubt, where they have the right to do something, many times they take the more cautious attitude and do not do it.

This bill spells out eight or nine separate and distinct tools and enables that trial court judge in his or her discretion to sample or to use those tools as needed in the particular case. I think it would expedite the way for the trial court judge, but ultimately, of course, it will make it much easier for the child who is testifying.

Thank you very much.

The CHAIRMAN. Thank you very much, Congressman.

Gentlemen, I have a number of questions, but I will try to limit my oral questions to several in the interest of allowing my colleagues to ask questions and submit several of their questions to you in writing.

Senator, let me ask you about the recent Supreme Court decision in *Coy* v. *Iowa,* in which case the trial court allowed a child to testify from behind a one-way screen so that she could not be seen by her alleged abuser. The Supreme Court struck down that conviction, stating that the screen violated the defendant's right to confront his accuser.

In a concurring opinion, Justice O'Connor stated that techniques such as a screen should be allowed, but only when there is "a case-specific finding of necessity."

Now, does the Constitution require such a case-specific finding of necessity? And if it does, what does that do to your bill?

Senator REID. Mr. Chairman, I am familiar with the *Coy* decision, and I am also familiar with the fact that the composition of the court has changed since that decision.

I think that if the same case, or one similar in nature, came before the court that O'Connor's view would prevail. And I think if you look at some of Justice Kennedy's opinions, both when he was in the court of appeals and now, I think that would be the case.

However, I think that to prevent any problems, I think that we should look at our legislation—and, in fact, we are doing so now. I think we should consider an amendment that would address the Confrontation Clause concerns of Justice O'Connor. I think that her point is valid. I think that the finding of necessity could be statutory in nature; that is, simply a court could find that whatever the circumstances of the case might be, the facts justify a finding of necessity.

The Confrontation Clause is not absolute, and that is what she said. And I think there is fairly unanimous agreement to that being the case. We do have exceptions—the hearsay rule, et cetera. So I think we should not ignore the Coy decision and certainly not ignore Justice O'Connor. And I think that you can look for an amendment to be drafted to take that into consideration.

The CHAIRMAN. There is another way of saying it, and let me make sure I understand. Right now, as your legislation stands and as the Supreme Court ruling sits, at least portions, if not all of your bill, would be struck down.

Senator **Reid**. Well, there would be a portion, but I think, generally speaking——

The **Chairman**. You think it would be separable.

Senator **Reid**. Yes.

The **Chairman**. You think they would not declare the entire legislation unconstitutional.

Senator **Reid**. Yes. And with the correction, the amendment that we are going to address, I think that it would be taking care of the whole bill. And I do certainly think that parts of the bill are separable, the sections.

The **Chairman**. So O'Connor's concurring opinion, which is not what the four—four, I believe.

Senator **Reid**. Yes, it was a 6-2 decision.

The **Chairman**. Five. So five of them——

Senator **Reid**. It was a 6-2 opinion with O'Connor and Justice White concurring. So if Kennedy voted with them, it would be 5-4 now.

The **Chairman**. That is it. Well, if you can predict how Supreme Court Justices are going to vote, we would like you on this committee. [Laughter.]

Right, Orrin?

Senator **Hatch**. I think that is a fair statement.

The **Chairman**. But you are better at it than we are and any President has ever been. I am being a little facetious, but I understand what you are saying now. And you are going to then amend your legislation to comport with the concurring opinion of Justice O'Connor.

Senator **Reid**. Yes, the one section.

Mr. **DeWine**. Mr. Chairman?

Senator **Reid**. My staff just tells me I answered the question properly.

The **Chairman**. My staff told me I did not ask the question properly. So we are okay. But, then, again, what do staffs know, right? [Laughter.]

I am sorry. Congressman?

Mr. **DeWine**. I was just going to say briefly, Mr. Chairman, I do not think anything is lost as far as the victims rights by putting in a specific provision in this bill that calls for a specific finding. It seems to me it would be a prudent thing to do. No one can predict what the Supreme Court is going to do; but if you look at the concurring opinion and you try to count the votes, I think the odds are pretty good that it would survive constitutional test—at least I certainly would be willing to take it, if there is a specific finding written into the legislation as your question, I think, indicate.

The **Chairman**. And, for the record, by specific finding we mean that it would be established that the child was, in fact, afraid and concerned about confronting the alleged abuser.

Mr. **DeWine**. Yes. I think you need a finding by the trial court judge based upon the evidence in that particular case that for that child there is a real necessity for that to take place. That way we can all be assured that the trial court has taken this into consideration and has not just done it automatically.

Senator REID. Mr. Chairman, if I could interrupt Congressman DeWine, I would agree. I think specifically the court would make a finding allowing the child to testify in a special manner in a specific case and it is being done to promote the State's public policy protecting child witnesses.

It is my understanding that a number of States since the *Coy* decision came down have made that specific finding, and they have been upheld in the appellate level to this point. So I think what we are talking about is not charting new ground. It is basically something that we did not realize existed when we drafted the statute, and we can change that quickly.

The CHAIRMAN. It is understandable. I do not ask the question critically. I just ask the question in terms——

Senator REID. Oh, sure, we understand.

The CHAIRMAN. Now, Congressman, let me ask you about the section of your bill amends the Federal Rules of Criminal Procedure with regard to the presumed competence of a child. I do not know if you have the copy of your bill in front of you, but this section begins on line 24, page 4. It is labeled "Capacity." It says, "A person of sufficient capacity to understand the obligation of an oath or affirmation is competent to be a witness except as otherwise provided by rule or statute. However, a child is presumed to be competent. If the child's competency is questioned, the court shall determine whether the child is mentally capable of understanding the nature of the question put to the child, whether the child is able to formulate intelligent answers and communicate impressions or recollections regarding the incident about which the child is to testify, and whether the child can understand the responsibility to tell the truth. In making these determinations, the court may do any or all of the following:" and you list them.

Now, why did you not stop at line 2, which says, "However, a child is presumed to be competent," and end it at that? What is the necessity of—is it legal, constitutional, or is it designed, the remaining roughly 28 or 30 lines. And if you would rather have time to answer that for the record, that would be appropriate also in the interest of your time.

Mr. DEWINE. Mr. Chairman, I would have to look at that. I think the key here is our intention was to make it an individual test in each case for the trial court judge, and to remove any indication that there would be a presumption against the child testifying. That was the intention. Whether we have done that or not, we will certainly——

The CHAIRMAN. I am not sure that I am right about this. I ask it sincerely as a question. I would like you to look at it and answer in writing the rationale for the remainder of page 5. I think I understand what you are attempting to overcome. So many children, because they are abused as young as age 2 and 3 and 4 and 5 years old, are deemed under our system not to be competent, able to understand an oath, and thereby able to take the witness stand and, under our system, under oath testify to what happened to them. And so courts have come along and said, in serious and egregious cases, "although there may be evidence, we do not believe it. Since the child is the repository of this evidence, we do not think the child is competent enough to sit in this courtroom and tell us what happened—because they do not understand, because they are not able to communicate with us," or whatever. And so the case gets thrown out until the time the child is competent enough to come back before the court, which may be 2, 3, 5, 7 years of abuse later.

That is what you are trying to overcome, I know, and my question—again, I do not want you to answer it now, but I will just repeat it for you to be responded to in writing. Why not just change the presumption and just say, "For the purposes of the law, a child is presumed to be competent, period?" And the burden of proof shifts the other way.

Senator REID. Mr. Chairman, may I respond briefly to that?

The CHAIRMAN. Yes.

Senator REID. The reason that the language was placed in there the way it is—and whether it is necessary or not is a question that remains to be seen. But this was a change, radical in some people's mind, to change the burden because it is presumed in much of the common law and statutory law that a child is presumed incompetent. And you have to prove that child to be competent before that young person can testify. This set a pattern or guide for the courts to follow in determining the incompetence of a child because it is clear that we have established a presumption that the child is competent.

But we will look into that more and give you and your staff more information.

The CHAIRMAN. I would appreciate it.

Senator REID. But that was the reason it was done in that manner.

The CHAIRMAN. I yield to my distinguished colleague from South Carolina, Senator Thurmond.

OPENING STATEMENT OF SENATOR STROM THURMOND

Senator THURMOND. Thank you, Mr. Chairman.

Today, we will hear testimony regarding the treatment of child abuse allegations and victims in the judicial and victims services system. The purpose of this hearing is to determine if the needs of these child victims and those associated with them are effectively met and whether the judicial system is handling these cases in an appropriate manner.

We will also examine recent efforts to respond to the needs of child victims, both in victim services programs and in our courts. Finally, this hearing will enable us to consider what else needs to be done and will offer insight as to what role, if any, the Federal Government should play.

The protection of innocent children from abuse, although traditionally handled by the States, is an important matter of national concern which must be addressed. Child abuse, without question, is one of the most heinous crimes any person can commit. Sadly, whether sexual or physical, it takes the youth and innocence away from our children, in addition to often ruining their lives. Those who violently prey upon childhood innocence must be caught, prosecuted, and sentenced to tough criminal penalties. The victim must be assisted with appropriate medical care and counseling.

As we consider testimony, questions may be raised in this hearing concerning the handling of child abuse allegations raised in contested custody disputes in child abuse prosecutions. Although these are unquestionably State matters, it is appropriate to examine such serious allegations in the context of this hearing.

As we consider this issue, some recent statistics are disturbing. Reported child abuse and neglect cases are on the rise. According to figures from the U.S. Department of Health and Human Services, more than 1½ million children were abused or neglected throughout our Nation in 1986. This figure translates into 25 children per 1,000 who are endangered or who have already been harmed as a result of child abuse or neglect.

Confirmed cases of child abuse have increased by 64 percent between 1980 and 1986. Due to this growing trend, many States have increased their efforts in the prosecution of these cases. Regarding the prosecution of child abuse cases, the States in their efforts to see justice done have identified and addressed the interest of the child victims. Although more can always be done, many States have made great strides in recent years.

The Federal Government has aided in these efforts. For example, the Federal Government took a major step toward realizing the needs of child victims when it enacted the Child Abuse Prevention and Treatment Act in 1974. This legislation provides for various State programs relating to the prevention and treatment of child abuse. In addition, funds are earmarked for research and demonstration projects at the State level related to child abuse.

In the 98th Congress, I introduced the Victims of Crime Act of 1984. This bill was enacted and was recently reauthorized as part of the Anti-Drug Abuse Act of 1988. The legislation established several programs for victims of crime, including State grant programs which emphasize services for victims of child abuse.

Finally, Congress recently passed the Child Protection and Obscenity Enforcement Act of 1988, which I introduced. This important legislation, in addition to enhancing the penalties for obscenity, gave teeth to the Federal Government's efforts against the sexual exploitation of children.

In closing, we must do all we can to help the victims of child abuse. Whether we accomplish this through greater accountability for all persons involved in the system, through more funding, or enactment of necessary laws remains to be seen. We must continue to work together—judges, parents, prosecutors, social workers, and legislators—to improve the lives of our most precious resource: our children.

Mr. Chairman, we have many distinguished witnesses who will testify, and I am pleased that Jayne Crisp, a victims rights advocate from my home State, is one of these distinguished witnesses. I look forward to her testimony, along with the other witnesses will hear today. I would like for her to stand if she is in the audience now, just to be sure.

[Ms. Crisp stood.]

Senator THURMOND. Thank you very much. I just wanted to be sure that you are here to be acknowledged.

The CHAIRMAN. And you are in good hands, I can assure you.

Senator THURMOND. Mr. Chairman, I want to commend you for holding this hearing. I suggested quite some time ago—last year, I believe—that we ought to hold a hearing on this subject.

Now, whether the Federal Government should go into this matter on a deeper scale is another question. It is primarily a State matter. We cannot put everything on the Federal Government. On the other hand, I felt we could get national attention here by holding a hearing here in Washington, and maybe something more can be done here. We must take steps to end this abuse of children.

I might say that if there is anything that makes my blood boil, it is the abuse of children and women. There is just no excuse for it. Any step we can take that is reasonable, we should do it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Hatch, do you have questions for our witnesses?

OPENING STATEMENT OF SENATOR ORRIN G. HATCH

Senator HATCH. Let me just say that I want to welcome both of you here. I appreciate the testimony you have brought to us today and the efforts that both of you are making in this very crucial and critical area. I agree with both the chairman and the ranking member that this is a very serious area of the law. We need to make some changes. We need to do some things that are innovative and creative because this is much more widespread than people in this country have any idea. I think it is time that we do something in this area, and we appreciate the fine efforts both of you are making to try and put some pressure on the whole Congress to do what is right in this area.

I just want to welcome you both to the committee and tell you how much we appreciate you.

[The prepared statement of Senator Hatch follows:]

From the office of

SEN. ORRIN HATCH

Washington, D.C. 20510

May 16, 1989 Contact: Paul Smith, 202/224-9854

STATEMENT OF SEN. ORRIN HATCH
BEFORE THE SENATE COMMITTEE ON THE JUDICIARY
HEARING ON CHILD ABUSE

Thank you, Mr. Chairman. I , too, wish to extend a warm welcome to the witnesses who have come before us today. Many of you have traveled long distances and invested a great deal of talent and time in your preparation for this hearing. The work you are doing on behalf of the victims of child abuse is of great importance — perhaps second only to parenting itself. I thank you for your generous labors on behalf of our nation's children and look forward to carefully reviewing your proposals.

A great Utahn, David O. McKay wisely said, "No success, however great, can compensate for failure in the home." I believe that with all my heart. It is true for us not only as individuals but also a a nation. No matter how great our governmental, economic, and cultural achievements, they will be hollow, temporary, and futile if our homes are insecure and our families are weakened.

Unfortunately, failure in the home is all too common today. The most tragic manifestation of this failure is the widespread incidence of child abuse, including sexual abuse. Prepared testimony received by the committee documents cases involving children only one to two years old.

I know that I speak for all of us here in registering shock and revulsion at all incidents of child abuse. Obviously, shock and revulsion won't help these victims. It is impossible to restore what they have lost. But at least we can endeavor to ameliorate their suffering instead of compounding it. Children who are victims of these perverted practices should not be victimized again by an indifferent or insensitive judicial system. All too often, the abused child must run a veritable gauntlet of officials — police officers, social workers, lawyers, hospital personnel, investigators, therapists, and others — in order to receive any meaningful protection. I noted in Mr. Cramer's prepared testimony, for example, that on one occasion he was the thirteenth professional a twelve-year-old victim of rape by her father had to speak to. Even after running the gauntlet, the child victim is too often denied meaningful protection.

The witnesses here have done tremendous work in changing that situation for child victims within their jurisdictions. Now their work needs to emulated nationally. Too many young victims are still being bounced from one agency to another. Too many young victims find themselves in limbo, proceeding unpredictably through a series of guardians instead of being promptly placed in a stable and suitable home. Too many young victims find that our system of justice assures representation of the interests of the state, the protective parent, other parties, even the abusing parent — but neglects to assure representation of the best interest of the child. The child's best interest should be our first priority.

We need to continue improving victim assistance and victim compensation programs. Their benefits — including notification of events in the justice process, participation in some proceedings, counseling, preparation of Victim Impact Statements, and so forth — must be extended to child victims and innocent family members. We may need to consider reforming child abuse laws to provide court-appointed support or intervention for children abused by criminal offenders as well as those in juvenile and family court proceedings.

This hearing will explore how child abuse victims are treated in the judicial system and how victim services programs can better meet their unique needs. Many of our witnesses have proven that dramatic improvement is possible. I am gratified by the phenomenal increase in local programs aimed at more sensitivity responding to the abused child. While the federal government certainly has a role to play, tremendous success has already been achieved in a few jurisdictions because of the personal, one-on-one concern demonstrated by participants in these community-based programs.

To encourage others throughout the nation to emulate and amplify these efforts is our challenge. It is my hope that this hearing will prove to be an important step in that direction.

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Senator **Thurmond**. Mr. Chairman, may I just have half a minute?

The **Chairman**. Surely.

Senator **Thurmond**. I want to thank Senator Reid for being here, and the distinguished House member here, too. We appreciate their presence, and we thank you for taking the time and coming and testifying.

The **Chairman**. Senator Specter?

Senator **Specter**. Mr. Chairman, I wonder if it would be in order to make a very brief opening statement as it relates to some questions I have for our witnesses?

The **Chairman**. Surely.

OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator **Specter**. Thank you.

Mr. Chairman, I commend you for holding this very important hearing because it is a major problem in this country today how we respond to the serious issue of child abuse. I served for 6 years as the chairman of the Juvenile Justice subcommittee and heard case after case about sexual abuse which, candidly, I found startling even though I had been a prosecuting attorney in a big American city for many years.

Apparently, this problem has been with society for who knows how long, but it only recently has come to the surface with a series of disclosures and prosecutions. There have been many celebrated cases, aside from sexual abuse, of beating of children, so it is a major national problem. I think that Senator Reid and Congressman DeWine are to be commended for bringing this legislation forward and for the thoughtful approach which they have taken.

I candidly have some reservations about modifications of the criminal law where we seek to incarcerate people for child abuse, although I totally agree with Senator Thurmond that there is no more heinous act than child abuse. Where the evidence is presented, I concur with Senator Thurmond and others that it ought to be dealt with in a very tough manner, but the procedural protections which are present in the criminal law at the present time I think should be changed only in a very careful manner.

When you deal with the question of competency of witnesses, children especially, that has been crafted in the common law for hundreds of years, as we have gone through the presumptions and the issue of competency. It is a very tough matter, and I have been a party to proceedings on competency of children. Frankly, I would have grave reservations about a legislative change in the context as to how those rules have been crafted so carefully in a common law tradition with judges working on them minutely.

On the issue of confrontation of the witness, I recognize the need for assistance and for very careful treatment for minors, but there, again, you have a very difficult issue, and it is only one where I think we have to be extremely careful.

A collateral concern that I have arises out of incarceration in another context, where women, mothers, are incarcerated when they disobey court orders. There is a very celebrated case which is pending in the District of Columbia involving Dr. Jean Elizabeth

Morgan, who has been in jail since August of 1987 for her refusal to comply with a court order that her child be turned over to the child's father.

Before discussing this case—and I shall do so only very briefly—I want to say for the record that my former administrative assistant, Paul Michel, who is now Judge Michel on the Court of Appeals for the Federal Circuit, is the fiance of Elizabeth Morgan. I do not know Elizabeth Morgan and have never met her, but I do know my former administrative assistant's relationship as her fiance. That is something that I have corresponded with both the chairman and the ranking member, Senator Biden and Senator Thurmond, about in discussing the need for hearings on this subject and a wide variety of subjects which we are addressing.

I did so because I wanted my colleagues who are in charge of this committee, the chairman and the ranking member, to know of the relationship I had, so it will all be on top of the table. I want to state that face up as I broach this subject very briefly this morning.

There has been a very learned Law Review article published by Assistant Professor Susan Apel of the Vermont Law School on this subject. Mr. Chairman, I would ask that the galleys or page proofs of an article which will appear in the American University Law Review be made a part of the record, because I think it sheds considerable light on many aspects of this problem.

The CHAIRMAN. Running the risk of losing the good will of my ranking member, who always tells me as chairman he saved the committee a lot of money by not having everything reprinted which we could have distributed, I will have it put in the record. He usually suggests in his frugality, which is commendable, that it be put in the file. But I think this should be put in the record this time, and I promise to do better next time, Strom. Without objection.

Senator SPECTER. Thank you, Mr. Chairman. I think it can be photostated at not that great of a cost.

[The article of Professor Apel follows:]

CUSTODIAL PARENTS, CHILD SEXUAL ABUSE, AND THE LEGAL SYSTEM: BEYOND CONTEMPT*

SUSAN APEL**

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INTRODUCTION

Dr. Elizabeth Morgan has been incarcerated in the District of Columbia Detention Facility since August 28, 1987. The superior court ordered her incarceration after she refused to obey an order requiring her to send her five year old daughter, Hilary, on a two-week unsupervised period of visitation with the child's father, Dr. Eric Foretich. Her refusal was based upon her belief that Dr. Foretich had repeatedly sexually abused their daughter over a period of at least three years.

Dr. Morgan's attempts to protect her daughter through use of the legal system persisted for more than two years. In numerous pro-

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** Assistant Professor, Vermont Law School; J.D., Northeastern University School of Law, 1977. In addition to academic credentials, I have practiced law for over ten years; my practice was varied but always contained a substantial domestic relations component. I wish to thank my research assistant, Gayle Middleton, and my colleagues, Michael Mello, Paul Ferber, and Gil Kujovich, for their support and guidance, but mostly for their enthusiasm and willingness to read and comment on the various drafts of this article. I am also grateful to Jane Graves for her invaluable contributions to the production of this article.

ceedings,[1] she presented evidence that her daughter suffered sexual abuse by Dr. Foretich during her visits with him. This evidence failed to convince the court that the sexual abuse had in fact occurred.[2] The superior court ordered that Hilary be delivered to Dr. Foretich for visitation and Dr. Morgan refused to comply with the order.[3] Accordingly, the court held Dr. Morgan in civil contempt of its order, and informed her that she could purge herself by delivering her daughter to Dr. Foretich for unsupervised visitation.[4] Dr. Morgan continued her refusal to comply with the visitation order due to her belief that unsupervised contact with the father would result in further sexual abuse of her child. Having no further legal recourse, she placed the child in hiding in the care of persons and in a location that she would not reveal. Subsequently, she was incarcerated in a Washington, D.C. jail.

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[1] The procedural history of this case is long and complex. Nonetheless, it is important to note in order to understand how Morgan and others like her chose the ultimate course of action that has resulted in a finding of contempt. The following, drawn from Morgan's Petition for Writ of Habeas Corpus by Person in Custody of District of Columbia, *Morgan v. Plaut*, No. 88-492 (D.D.C. filed Feb. 24, 1988) [hereinafter Petition for Writ of Habeas Corpus]; and Morgan v. Foretich, 521 A.2d 248, (D.C. 1987), is a partial history. Unfortunately, since the court chose to seal the record of proceedings, much information is beyond the reach of the public.

1983-84—Morgan complies with court order granting Foretich visitation rights with Hilary. Morgan v. Foretich, 521 A.2d 248, 249 (D.C. 1987).

Jan., 1985—Morgan, on advice of social worker who suspected sexual abuse, seeks temporary restraining order to suspend visits pending an evaluation of Hilary. Court denies motion. Morgan complies with order. Morgan v. Foretich, 546 A.2d 407, 408 (D.C. 1988), *cert. denied*, 109 S. Ct. 790 (1989).

Nov., 1985—Morgan seeks temporary suspension of visits to enable valid evaluation of Hilary. Foretich moves to oppose evaluation. Court finds evidence of abuse "inconclusive" and denies Morgan's motion. *Id.*

Feb., 1986—On advice of Mary Froning, Hilary's therapist, Morgan suspends visits. Foretich moves for contempt. Morgan cross-motions for suspension of visitation. *Id.*

June, 1986—Hearing on above motions. Court holds that Morgan did not prove abuse by "preponderance of evidence," and ordered a month-long unsupervised visit between Foretich and Hilary. Morgan does not comply. *Id.*

Aug., 1986—Hearing to show cause why Morgan should not be held in contempt. Imprisoned for several days and nights; released pending appeal with various conditions imposed including the posting of $200,000 security. *Id.* at 409.

Apr., 1987—Court expands order and once again allows unsupervised weekend visits. Morgan complies. Hilary complains of sexual abuse during first and at least two other subsequent visits. Foretich moves for a change of custody and termination of Morgan's parental rights. Morgan cross-moves to suspend visitation or to mandate supervised visitation. *Id.*

Aug., 1987—Court orders two-week unsupervised visit. Morgan does not comply. Seeks modification again; court refuses. Contempt hearing held: Morgan found in contempt but given opportunity to purge herself by turning child over for visitation. Morgan hides child and begins indefinite prison sentence for civil contempt, and is ordered to pay part of Foretich's legal fees. *Id.* at 410.

[2] The transcript of this hearing is currently under seal and therefore unavailable to the public. As previously stated, several related hearings were held on the parties' motions and cross-motions to modify the order regarding visitation rights and custody, as well as the three hearings on contempt charges. Relevant portions of these hearings were also placed under seal by the court. The record that *is* available, however, shows that the information relied upon by Dr. Morgan and presented to the court by the time of and including the final contempt hearing in August, 1987, included but was not limited to the following: the child's own, often sexually graphic, statements to her mother, grandmother, three psychiatrists and psychologists, a nurse, a pediatrician, a social worker, and a police officer; the professional opinions of Dr. Charles Shubin, a pediatrician specializing in the diagnosis of sexual abuse in children; the professional opinion of child psychologist Mary Froning, a specialist who counseled the child over a period of one-and-a-half years and who specifically advised Dr. Morgan that unsupervised visitation would result in grave and imminent danger to her daughter; the professional opinion of Dr. David Corwin, another specialist in child abuse, who spent over 200 hours evaluating Hilary's case and who joined in the conclusion that Hilary had been sexually abused by her father; allegations of Dr. Foretich's sexual abuse of another daughter from a previous marriage, and testimony and part of a videotape depicting Hilary's behavior

At the time of the writing of this article, Dr. Morgan remains in prison. Her medical practice has been destroyed; the court has attempted to seize her home to pay for fines of $5,000 per day imposed in connection with earlier contempt proceedings.[5] The child, Hilary, remains in hiding and ostensibly has had no contact with either of her parents, including the visitation sought by Dr. Foretich, for more than a year. Characteristic of the civil contempt order (by which Dr. Morgan was imprisoned), the present status may continue indefinitely.[6]

Elizabeth Morgan's case is not an isolated incident. Custodial parents, most of them mothers, have been faced with the Hobson's choice of defying court visitation orders to protect their children, thereby risking contempt charges, or heeding the court order and placing their children in danger of further sexual abuse by the noncustodial parent.[7] Some, like Dr. Morgan, defy the court order and

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generally and specifically after a visit with her father. Petition for Writ of Habeas Corpus, *supra* note 2.

Presumably, the testimony of all of the aforementioned experts was placed before the court and admitted into evidence. The court excluded transcripts of a hearing regarding the alleged sexual abuse of Dr. Foretich's other daughter as not relevant. In a separate action for damages brought by Dr. Morgan in the federal court, the United States Court of Appeals for the Fourth Circuit reversed the lower court's similar exclusion of this evidence. Morgan v. Foretich, 846 F.2d 941, 944 (4th Cir. 1988).

[3] *See supra* note 1 (detailing procedural history of case).

[4] Morgan v. Foretich, 546 A.2d 407, 410 (D.C. 1988), *cert. denied*, 109 S. Ct. 790 (1989).

[5] *Id.* at 412. The trial court's order requiring forfeiture of Morgan's home was overturned on appeal. The appellate court found that she had agreed to post her home as security for her appearance in court but not to ensure general compliance with the court's order. *Id.*

[6] Dr. Morgan has stated repeatedly that she will never acquiesce to the provisions of this court order and that she is prepared to stay in prison until Hilary reaches the age of majority (presumably at that point the visitation order will expire). Petition for Writ of Habeas Corpus, *supra* note 2, at 7.

[7] Keating, *Children in Incestuous Relationships: The Forgotten Victims*, 34 LOY. L. REV. 111 (1988) (relating stories of mothers similar to Dr. Morgan who face negative judicial response to allegations of child abuse). The vast majority of sexually abused children, male and female, have been abused by men. One study showed that in roughly half of the reported cases, the biological father is the alleged perpetrator while only eight percent of the alleged perpetrators were female. Thoennes and Pearson, *Recommendations from the Sexual Abuse Allegations Project*, in NATIONAL LEGAL RESOURCE CENTER FOR CHILD ADVOCACY AND PROTECTION, AMERICAN

are incarcerated. Others defy the court order and flee with their children, thus avoiding contempt charges and the resulting imprisonment.[8]

This Article will examine the problem of the custodial parent who refuses to comply with a court order granting visitation rights to the noncustodial parent as a result of allegations of sexual abuse by the noncustodial parent. Part I of this Article will explain briefly why it is difficult, at best, to prove allegations of sexual abuse in court. It is this difficulty, and at times, impossibility, that forces the custodial parent to search for alternatives outside of the law. Parts II and III will explore, respectively, civil and criminal contempt—the legal system's responses to the custodial parent who defies the court order—and explain why the use of civil or criminal contempt in this situation is ineffective and counterproductive. Parts IV and V will examine the use of the necessity defense in criminal prosecutions and the standards used in assessing culpability for violation of criminal custodial interference statutes. Part VI proposes a new standard, based on the necessity defense doctrine, to be applied in contempt proceedings against custodial parents such as Morgan. This standard recognizes that a good faith belief that violating the court order was necessary to protect the child from further harm should be a complete defense to charges of contempt. Finally, Part VII analyzes the practical ramifications of adopting such a standard, and concludes that the difficulty of proving allegations of child abuse, the inherent limitations of the legal system, resource allocation questions, and a focus on the best interests of the child lead to a conclusion that the courts would do well to honor the good faith belief of the custodial parent instead of imprisoning her, even at the expense of the rights of the noncustodial parent to maintain contact with the child.

I. THE DIFFICULTY OF PROVING CHILD SEXUAL ABUSE IN COURT

The judicial system is this culture's legal mechanism for resolving disputes. Despite occasional questions about whether or not courts are the optimal method of dispute resolution for problems of a domestic nature, courts certainly have not abandoned their function in the family law sphere. The courts still arbitrate disputes over dispo-

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Bar Association, Sexual Abuse Allegations in Custody and Visitation Cases 20 (E. Nicholson, ed. 1988). *See also* D. Finkelhor, Child Sexual Abuse: New Theory and Research 73 (1984) (finding in survey of Boston families that 94% of sexual abuse victims were assaulted by men).

[8] *See infra* note 53 and accompanying text; *see also* Keating, *supra* note 7, at 111-12 (discussing cases in which mothers hid their children to escape allegedly abusive fathers).

sition of property, awards of alimony and child support, and custody and visitation.[9] Thus, a custodial parent who suspects sexual abuse, and therefore wants to stop or modify existing visitation rights, could be expected to turn to a court for relief. Upon proof that abuse did in fact occur (and presumably, that it might continue), the court would then take appropriate steps to modify the original court order to prevent further potentially harmful contact between the abusive parent and the child.[10]

The obvious question, then, is why Elizabeth Morgan, after repeated attempts to get the court to intervene, failed in her efforts to prove that her ex-husband had sexually abused their daughter. Her inability to prove that her child had been abused, and that her ex-husband was the abuser, may be seen as indicative of one of three things. First, although the evidence was sufficient, the judge did not act properly. In this case, one could simply say that an occasional incompetent or prejudiced judge is a regrettable "glitch" in the system and, fortunately, one contemplated and therefore provided for; an appeal of the judge's ruling would "correct" the situation.[11] Second, the abuse complained of simply did not occur. In this instance, justice would have been served by the present result. In both cases, one could say that the legal system worked as it is supposed to.

However, a third possibility exists—that even in cases in which abuse has in fact occurred, it is often, and perhaps almost always, impossible to prove within the evidentiary rules and the adversarial nature of the current legal system.[12] Lack of corroborating witnesses, the age of the victim, the real and perceived problems in the competency and credibility of child witnesses, the clash of the rights of the victim with the sixth amendment confrontation rights of the defendant, and the responses and prejudices of the culture as a whole, carried into the courtroom by judge and jury, combine to make child abuse "one of the most difficult crimes to detect and prosecute . . . ."[13]

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[9] *See* H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES § 12.4, at 445, § 12.5 at 456 (1988) (describing judicial participation in resolution of family law disputes).

[10] NATIONAL LEGAL RESOURCE CENTER FOR CHILD ADVOCACY AND PROTECTION, AMERICAN BAR ASSOCIATION, SEXUAL ABUSE ALLEGATIONS IN CUSTODY AND VISITATION CASES 6 (E. Nicholson, ed. 1988) [hereinafter SEXUAL ABUSE] (explaining court involvement in abuse cases between divorced parents).

[11] Appellate courts, however, rarely reverse custody decisions because they place great weight on the trial court opinions, reversing only when the trial court abuses its broad discretion. Nicholson, *Child Sexual Abuse Allegations in Family Court Proceedings: A Survey of Legal Issues*, in SEXUAL ABUSE, *supra* note 10, at 258; *see also* Lehman v. Billman, 178 Mont. 367, 373, 584 P.2d 662, 665 (1978) (deferring to district court on issue of custody and child's best interest).

[12] *See* SEXUAL ABUSE, *supra* note 10, at 12-14, 17 (presenting reasons for judicial skepticism in abuse cases and maintaining that "all but the most flagrant cases of sexual abuse are difficult to validate"). It is not my intent to make reformation of the legal system the focus of this Article; it is important, however, to acknowledge the reality that causes parents to abandon the system that is supposed to resolve family problems. Nor, as this section of this Article will indicate, do I propose that the legal system is solely responsible for the problems in proving a case of child abuse; other factors, social and psychological, play a role as well.

The most obvious problem of proof is that sexual abuse of children, like rape, is a crime that is done privately, often in the home where there are few, if any, witnesses. The victim is often the *only* witness.[14] Adult women have suffered through decades of being unable to prove that they had been raped because no one had seen it happen;[15] until recently, the law itself often demanded corroborating evidence in order to secure a conviction.[16] In both cases, the problem has been the same albeit for different reasons; women are often suspected of "consent," while children are suspected of "fabricating."[17]

Children are often accused of lying about sexual abuse, whether for reasons of their own or because they are suspected of being brainwashed by adults.[18] Our culture is one that simply does not find children credible.[19] The notion that children cannot be believed is entrenched in our legal system as well as the larger culture. Children under a certain age may be deemed by law to be incompetent as witnesses; in other instances, an elaborate voir dire on the issue of the child's understanding of the truth may be required to allow the child to testify at all.[20] Most experts, however, agree that the percentage of cases in which children lie about sexual abuse is very low, in some studies as low as two to four percent.[21]

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[13] Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987).

[14] *See* Morgan v. Foretich, 846 F.2d 941, 945 (4th Cir. 1988) (explaining need for admitting hearsay testimony in child abuse cases).

[15] *See* D. RUSSELL, SEXUAL EXPLOITATION 100 (1984) (reporting results of study of rape victims in which only 20% of rapes had been reported).

[16] *Id.* at 138 (characterizing American society as rape-supportive and citing reasons for failure of effective rape adjudication).

[17] *Id.* (discussing notion that women consent to rape).

[18] J. CREWDSON, BY SILENCE BETRAYED: SEXUAL ABUSE OF CHILDREN IN AMERICA 169-70 (1988) (discussing reasons why children tell lies and improbability of children lying in sexual abuse cases). *See also* Keating, *supra* note 7, at 115 (noting misconception of children's untruthfulness).

[19] Bulkley, *Evidentiary and Procedural Trends in State Legislature and Other Emerging Legal Issues in Child Sexual Abuse Cases,* 89 DICK. L. REV. 645, 665 (1985) (showing that children are no more likely to prevaricate than adults).

[20] For a discussion of competency laws and their effect upon the child's ability to testify, see Note, *The Competency Requirement for the Child Victim of Sexual Abuse: Must We Abandon It?*, 40 U. MIAMI L. REV. 245, 257 (1985). No state bars the victim's testimony, but each differs as to what is required to establish competency of a minor to testify. On the other hand, some state legislatures have enacted statutes in which competency is assumed for purposes of child abuse cases. *Id.* at 253. *See also* MASS. GEN. LAWS ANN. ch. 23 § 20 (West Supp. 1985) (deeming as competent every person who can understand facts of testimony); ALA. CODE § 12-11-165 (1975) (permitting any person competent to understand oath to act as witness); CAL. EVID. CODE § 701 (West 1966) (understanding of truth and ability to be understood by jury determinative of competency).

The issue of credibility, as problematic as it may be, presumes that the child is capable of communicating at all. Many child abuse victims are pre-verbal; those who can talk may not have the vocabulary to adequately express what has happened to them. About half of sexual abuse victims may be under the age of five years; one writer states, "[m]any abusers have figured out what prosecutors already know, that it's open season on very young children."[22] Thus for half of the victims, the issue of credibility is not even reached; the child is simply unable to put words together that will adequately describe the crime.[23]

Without the child's testimony, the court could look to expert witnesses, which is most often done in the form of medical evidence. Such evidence, however, is difficult to come by. Children can be repeatedly abused and yet have no physical symptoms.[24] Assuming physical symptoms or the presence of a sexually-transmitted disease, such evidence may prove half a case: that a child was abused, but not by whom. In addition, many physicians are not adequately trained to detect symptoms of sexual abuse of children; the same is true of mental health professionals.[25] Training of these professionals, when it exists, quite naturally focuses upon the ability of the professional to detect and treat medical and psychological disorders. It does not prepare medical and mental health workers to elicit or preserve evidence that is necessarily useful in a court proceeding.[26] For example, the interview of the child may reveal that abuse has occurred, but the manner in which the interview is conducted (e.g., leading questions) may tarnish the evidence of the child's statement.[27]

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[21] J. CREWDSON, *supra* note 18, at 169. In Sink, *Studies of True and False Allegations: A Critical Review*, in SEXUAL ABUSE, *supra* note 10, at 40-41, the author reports the following studies: Jones (1986): of 576 referrals of child sexual abuse made to Department of Social Services in Denver, Colorado in 1983, 6% fictitious reporting by adults, 1% fictitious reporting by children; Horowitz, Salt, Gomes-Schwartz & Sauzier (1984): of 181 cases of child sexual abuse reported to Family Crisis Program in urban Boston, of 92 reported by children, 85 were substantiated, 7 were false, and of 76 reported by others, 9 were false; Goodwin, Sahd, & Rada (1979): of 46 such reported cases, 1 false allegation by child, 2 false allegations by parents.

[22] J. CREWDSON, *supra* note 18, at 162. Research concerning the ages of victims of sexual abuse is inconclusive. *See* Bulkley, *supra* note 19, at 647. While studies of the National Center on Child Abuse and Neglect place the age higher than does Crewdson, the statistics appear to show a shift downward. In 1981, the Center reported the average age of the victim to be between 11 and 14 years, followed by another study showing the majority of victims to be under the age of 12. The Center cited one program which showed that one-third of all victims were under the age of six years at the time of the abuse. *Id.*

[23] *See* Morgan v. Foretich, 846 F.2d 941, 943 (4th Cir. 1988) (noting that two-thirds of sexual abuse cases go unreported and those that do reach trial are difficult to prosecute) (citing Note, *The Testimony of Child Victims in Sex Abuse Prosecutions: Two Legislative Innovations*, 98 HARV. L. REV. 806, 807 n.7 (1985)).

[24] *See* J. CREWDSON *supra* note 18, at 164 (discussing difficulties of proving child abuse through physical examination).

[25] *See id.* at 161-62.

[26] One writer neatly captures this difference in approach by referring to "two formal

Assuming that a child is both physically and legally able to testify, the nature of a child's ability to perceive and to remember, combined with the adversarial nature of the court proceedings, often makes the child a poor witness:

> [T]he [defense] lawyer has a single, overriding goal—to show that the child, for reasons of his own or at the behest of some adult, has made up the allegations. If such a contest seems like a gross mismatch, it usually is—an intelligent, well-educated trial lawyer with years of experience in questioning hostile witnesses pitted against a child who is easily confused about time, place, and the sequence of events, who tells different parts of the same story at different times, and who links things in his mind that may not be connected. "Didn't you tell the police this happened in the bedroom?" the defense attorney may ask. "Now you're saying it happened in the bathroom." Perhaps the door between the bedroom and bathroom was open; perhaps the abuser took the child from the bedroom into the bathroom, but to the adults on the jury, who have learned to equate consistency with truthfulness, it begins to sound as though he is making the story up.[28]

While some accommodations have been made to ease a child's testifying in child abuse cases, such as testifying *in camera* or through use of a video monitor or some expansion of the hearsay exceptions,[29] there are constitutional standards that will allow such tinkering with

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ways that a determination about abuse of a child . . . is made: *legal factfinding* and *forming a professional opinion.*" Berliner, *Deciding Whether A Child Has Been Sexually Abused,* in SEXUAL ABUSE, *supra* note 10, at 49.

[27] *See* Goodman & Helgeson, *Child Sexual Assault: Children's Memory and the Law,* in AMERICAN BAR ASSOCIATION, PAPERS FROM A NATIONAL POLICY CONFERENCE ON LEGAL REFORMS IN CHILD SEXUAL ABUSE CASES: A REPORT OF THE AMERICAN BAR ASSOCIATION CHILD SEXUAL ABUSE LAW REFORM PROJECT 41, 46 (1985) [hereinafter LEGAL REFORMS IN CHILD SEXUAL ABUSE CASES] (warning against placing children in situations in which they are susceptible to suggestion); Goodman, *The Child Witness' Conclusions and Future Directions for Research and Legal Practice,* in LEGAL REFORMS IN CHILD SEXUAL ABUSE CASES 61, 74 (debating value of expert testimony in abuse cases).

[28] J. CREWDSON, *supra* note 18, at 166.

[29] Twenty-two states permit adult witnesses to testify to statements made to them by child victims. *See* Note, Pennsylvania v. Ritchie*: The Supreme Court Examines Confrontation and Due Process in Child Abuse Cases,* 34 LOY. L. REV. 181, 186 n.41 (1988); *see also* Bulkley, *supra* note 19, at 657-64 (discussing adaptations by legal system to problem of proving child abuse in court). A judge may also separate abuse allegations from other connected family law proceedings and have the case tried in juvenile court. Edwards, *The Relationship of Family and Juvenile Courts in Child Abuse Cases,* 27 SANTA CLARA L. REV. 201, 202 (1987). Other means of determining outcomes of sexual offense cases include the use of anatomically correct dolls, the hiring of special advocates to prepare children, and having specially equipped waiting or interviewing rooms. Nicholson, *Child Sexual Abuse Allegations in Family Court Proceedings: A Survey of Legal Issues* in SEXUAL ABUSE, *supra* note 10, at 267.

the system to go only so far.[30] Probably no amount of adjustment would prevent a defense attorney from engaging in the kind of cross-examination described above, with its concomitant effect on a jury.

Culturally, child sexual abuse is such a taboo that most of the participants in the legal (and perhaps other) system(s) want to turn away from it. No one wants to believe it is true. Despite the fact that an estimated twenty-two percent of Americans have been sexually abused as children,[31] many people, including juries and judges, find it difficult to believe that it happens. Moreover, most parents who have abused their children do not fit any particular profile; therefore, the accused abuser is likely to look and act just like any of the jurors or the judge.[32] To the extent that the fact-finder may identify with the alleged abuser, then, it is even more difficult to convince him that a seemingly "ordinary" parent is capable of, much less guilty of, sexually abusing a child.

Whether for reasons of sexism, or simply because negative feelings against a former marital partner are more within the first-hand experience of the fact-finder than sexual abuse of children, the myth of the vindictive female spouse remains. Accusations of sexual abuse of the child may be viewed suspiciously as attempts by the custodial parent to punish the former partner or to obtain leverage in some other aspect of the dissolution of the relationship.[33] Although the research in this area shows that the incidence of lying by custodial parents about this issue is very low,[34] the result of this research seem to have done little to dispel the myth. Even worse, the myth can be so strong in some cases that mothers who accuse their ex-spouses of child abuse find their fitness as parents called into question specifically because they have made such accusations.[35]

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[30] In Pennsylvania v. Ritchie, 480 U.S. 39 (1987), for example, the Court discussed whether restrictions on access to social service agency files violated a defendant's sixth amendment right to confront adverse witnesses. Although the Court did not take an expansive view of the right of confrontation and openly acknowledged the difficulty of proving a claim of child abuse, the plethora of separate opinions, including a strong dissent, indicated that the issue was far from settled. *See id.* at 62 (Brennan, J., dissenting). Indeed, one year later, in Coy v. Iowa, 108 S. Ct. 2798, 2803 (1988), the Court held that a defendant's sixth amendment right to confrontation was violated when the trial court permitted the child victims to testify in court behind a screen. Use of such a device was unconstitutional because it deprived a defendant of face-to-face confrontation. *See* Mlyniec & Dally, *See No Evil? Can Insulation of Child Sexual Abuse Victims Be Accomplished Without Endangering the Defendant's Constitutional Rights?*, 40 U. MIAMI L. REV. 115, 116 (1985) (analyzing attempts to shield child abuse victims and effects on defendants' constitutional rights).

[31] J. CREWDSON, *supra* note 18, at 24 (citing 1985 Los Angeles Times poll). Studies have shown that various percentages of the population have been sexually abused as children, depending in part upon the definition of sexual abuse. Gender also plays a role; percentages are higher for women. Two major studies, for example, showed that 15% of women and 6% of men were sexually abused as children (Finkelhor), the other showed that 38% of women had been so abused (Russell). D. FINKELHOR, CHILD SEXUAL ABUSE: NEW THEORY AND RESEARCH (1984) (studying 521 Boston parents); D. RUSSELL, *supra* note 15, at 183 (measuring prevalence of incestuous and extrafamilial sexual abuse).

[32] Berliner, *supra* note 26, at 62.

[33] *See* Keating, *supra* note 7, at 115 (maintaining that judiciary becomes prejudiced against parent who alleges abuse).

Other societal reasons also make abuse cases often impossible to prove. Despite the recent concentration of attempts to address the problem, such as telephone hotline numbers and public education campaigns, a desperate shortage of resources to investigate adequately complaints of child abuse still remains.[36] In a famous study oft-cited by persons who believe the furor over child abuse is simply a witchhunt, sixty-five percent of all reported cases of child abuse were determined to be "unfounded."[37] "Unfounded" does not, however, mean "untrue." Rather, there are not enough trained professionals (i.e. social workers, psychologists, or physicians) to investigate the claims adequately. The rash of recent legislation adds to the burden by not only requiring reporting and investigation of suspected child abuse, but often setting very short deadlines within which an "answer" must be given by the responsible agency.[38] While undoubtedly the intent of the legislation is to ensure promptness in dealing with the problem, given the scarcity of resources, time pressures decrease the ability of the child protection system to operate effectively.

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[34] Sink, *supra* note 21, at 40; Theonnes and Pearson, *supra* note 7, at 17, 21.

[35] Theonnes and Pearson, *supra* note 7, at 13. *See* Keating, *supra* note 7, at 114 (describing recent trend of custody modification following allegations of sexual abuse).

[36] The term "explosion" does not begin to describe the increase in numbers of children who are reported to have been sexually abused. The American Humane Association estimated that in 1984, 110,878 children were reported as victims of sexual molestation, a 54% increase from the previous year. American Humane Association, "Reports of Child Maltreatment Increase Again," News Release, (November 8, 1985). In Morgan v. Foretich, 846 F.2d 941, 943 (4th Cir. 1988), the Fourth Circuit cites a study by Finkelhor showing an 852% increase in reported cases from 1976 to 1983, and notes that an estimated two-thirds of child sexual abuse cases are never reported. Finally, a most recent report from the National Coalition for Children's Justice shows that in 1975, the number of reported cases was 1,741, and by 1986, the number had increased to 216,216, almost a quarter of a million cases per year.

[37] Besharov, *"Doing Something" About Child Abuse: The Need to Narrow the Grounds for State Intervention*, 8 Harv. J.L. & Pub. Pol'y 539, 556 (1985) (citing Besharov, *The Legal Aspects of Reporting Known and Suspected Child Abuse and Neglect*, 23 Vill. L. Rev. 458 (1977-78)). Besharov interpreted data from the U.S. National Center on Child Abuse and Neglect, National Analysis of Child Neglect and Abuse and Reporting (1978). It is important to note, however, that this study involved all forms of child abuse and neglect, not just sexual abuse. Moreover, Besharov himself, while urging a more restrained approach to the problem of child abuse, does not equate the high percentage of "unfounded" reports to any sinister cause. Instead, he states, "Few of these 'unfounded' reports are made maliciously; rather, most involve confusion over what types of situations should be reported. Approximately half involve situations of poor child care .... Many reports are made by professionals playing it safe." *Id.* at 556.

[38] *See, e.g.*, Md. Fam. Law Code Ann. § 5-706 (1984) (mandating completed investigation of incident of abuse within ten days); Ind. Code Ann. § 31-6-11-5 (Burns 1987) (requiring written report within forty-eight hours of reported abuse).

Finally, given all of the problems of proving child abuse, it is not difficult to see why prosecutors might use their discretion not to prosecute these cases. Prosecutors correctly view a pre-verbal child, or any child who is the sole witness to an incident, coupled with a lack of corroborating physical evidence and lack of access to or resources for appropriate expert testimony, as a case with almost no chance of conviction.[39] The training and skill of prosecutors cannot make up for the lack of admissible and persuasive evidence. The task is no easier for the custodial parent's attorney in the domestic relations arena.

Thus, the custodial parent who views the court system as providing no solution to her problem is neither ignorant nor anarchic. The perception that the legal system is "against" the custodial parent is probably accurate; the belief that the custodial parent must protect the child because the court system will not is a realistic one. The parent who finds herself having to choose between protecting the child and following a court order is between the proverbial rock and hard place. If the custodial parent chooses, as Morgan and others have done, to protect the child by violating the court order granting visitation rights to the suspected abuser, the court may hold the custodial parent in civil or criminal contempt.

II. Civil Contempt

It is well-established that courts have the power to enforce their orders through contempt proceedings.[40] When the purpose is to punish an individual for disobeying an order, the court invokes the powers of criminal contempt.[41] Historically, criminal contempt was the original form of contempt, designed to vindicate the court's own authority.[42] Courts soon realized, however, that such punishment was not always the desired purpose; a device was necessary to enable courts to enforce orders that would protect the rights of other parties. Civil contempt is the vehicle through which one party may enforce rights granted to her by the court.[43]

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[39] *See* J. Crewdson, *supra* note 18, at 176-77. Of course, the degree of prosecutorial reluctance varies from state to state, county to county, and individual to individual. Some factors that may cause prosecutors to back away from prosecuting these cases are individual personality and prejudices, discouragement with the legal system in child abuse cases, public pressure, lack of specialized training, and generally high caseloads. *Id.*

[40] *See* 28 U.S.C. § 1826 (1983) (creating federal right of courts to use contempt proceedings); Fed. R. Crim. P. 42 (enabling use of contempt in criminal proceedings); Note, *Civil and Criminal Contempt in Federal Courts*, 47 Yale L.J. 83, 85 (1947) (defining contempt and its punishment).

[41] *See* 3 C. Wright, Federal Practice and Procedure § 704 (1982) (asserting that criminal contempt punishes contemnor and vindicates court's authority).

[42] For a brief historical account of the development of civil and criminal contempt, see Note, *supra* note 40; *see also* R. Goldfarb, The Contempt Power 1-42 (1971) (discussing origin of contempt power in British law).

The purpose of civil contempt is coercive. It is used to force a recalcitrant party to obey a court order. Thus, the contemnor is incarcerated until she agrees to abide by the court's broken order.[44] Civil contempt is best described by the familiar, if by now banal, expression that the contemnor carries the "keys to his prison."[45] Persons found in civil contempt may purge themselves of the contempt charge and resulting imprisonment simply by doing that which they were originally ordered to do.[46] Because coercion is the purpose for civil contempt, once the contemnor is in fact coerced, further imprisonment would serve no useful end. If and when the contemnor decides to purge herself, she simply accedes to the terms of the court order and thereby secures her release from jail.[47] The beauty of this remedy, then, is the surgical precision with which it addresses the problem of noncompliance with a court order. It requires simple obedience and places the responsibility for incarceration directly upon the recalcitrant party.

Civil contempt has been used in a variety of contexts. Among its first uses in the federal court system were cases involving labor disputes.[48] Federal courts have used civil contempt most notably to force witnesses to testify in grand jury proceedings.[49] It should come as no surprise that the state courts are inundated with cases in the domestic relations area. Noncompliance with court orders concerning domestic issues such as custody, child support, and alimony is rampant.[50]

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[43] In Gompers v. Buck's Stove and Range Co., 221 U.S. 418, 441 (1911), for example, the Court stated that "for civil contempt, the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court." *See also* R. GOLDFARB, *supra* note 42, at 42-90. (relating history of contempt power and trends of usage and motivation).

[44] *See* C. WRIGHT, FEDERAL PRACTICE AND PROCEDURE § 2960 (1982).

[45] The history of this phrase is amusing. While its source is not entirely clear, the suggestion is that it was borrowed from a Pennsylvania case, Passmore Williamson's Case, 26 Pa. 9, 24 (1855), in which the court used the metaphor to describe an incarceration that it labelled as *criminal*. Confusion between the two is still not uncommon. *See* R. GOLDFARB, *supra* note 42, at 48. Following a discussion of the attempts of two distinguished commentators, Stewart Rapalje and James Oswald, to define the differences between civil and criminal contempt, Goldfarb concludes that "the greatest percentage of cases of contempt could fall into either category, depending not upon the application of the Rapalje or Oswald formulas, but upon the discretion of the particular decision-maker." *Id.* *See also* Shillitani v. United States, 384 U.S. 364, 367 (1966) (using phrase to illustrate purpose of civil contempt).

[46] *See generally* Note, *The Coercive Function of Civil Contempt*, 33 U. CHI. L. REV. 120 (1965).

[47] *See* 3 C. WRIGHT, FEDERAL PRACTICE AND PROCEDURE § 704 (1982) (describing operation of civil contempt).

[48] *See* Gompers v. Buck's Stove and Range Co., 221 U.S. 418, 452 (1911) (holding defendants guilty of contempt for refusing to stop boycott); United States v. United Mine Workers, 330 U.S. 258, 301 (1947) (upholding contempt order imposed on striking mineworkers).

[49] *In re* Crededio, 759 F.2d 589, 595 (7th Cir. 1985) (refusing to release immunized witness after questioning effectiveness of sanction); Sanchez v. United States, 725 F.2d 29, 30 (2d Cir. 1984) (reviewing coercive effect of contempt sanction); Simkin v. United States, 715

Civil contempt, then, designed as it is to change behavior rather than punish (and one might therefore say a remedy that focuses specifically on solving the problem) is available and is often used in situations akin to that presented in the *Morgan* case.[51] Unfortunately, as also demonstrated in *Morgan*, its power is much like the use of threat in negotiation.[52] For so long as the spectre of incarceration hangs over the head of a recalcitrant parent, the court retains its power to persuade her and to coerce the desired behavior. Once the contemnor has called the court's bluff, however, the court is required to make good on the threat and imprison the custodial parent. Some parents, like Morgan, have chosen jail over placing their children at risk.[53] It is at this point that the use of civil contempt

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F.2d 34, 39 (2d Cir. 1983) (remanding for determination as to coercive effect); *In re* Grand Jury Investigation, 600 F.2d 420, 428 (3rd Cir. 1979) (affirming refusal to release contemnor who refused to testify in organized crime case).

[50] Such cases are obviously too numerous to cite, although any conclusions from the number of cited cases would be grossly under-inclusive. Many of these cases, often deemed too fact-specific for use as precedent, are unreported. As to the rate of noncompliance itself, however, statistics are available. On the issue of child support alone, there is a 53% default rate. L. WEITZMAN, THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA 262 n.1 (1985) (*citing* U.S. Bureau of the Census, "Child Support and Alimony: 1981"). Weitzman's own study showed that within six months of the divorce decree, one out of six men owed an average of $1000 in unpaid alimony. *Id.* at 161. Examples of the use of civil contempt in reported domestic cases are voluminous. *See, e.g.*, Mallory v. Mallory, 207 Conn. 48, 57, 539 A.2d 995, 999 (1988) (upholding trial court's finding that father was in contempt for failure to pay child support); People v. Doherty, 165 Ill. App. 3d 630, 639-40, 518 N.E. 2d 1303, 1309 (1988) (holding that father could be found in both civil and criminal contempt for abduction of children from custodial mother); Alexander v. Alexander, 22 Ark. App. 273, 276-77, 742 S.W. 2d 115, 118 (1987) (finding civil contempt and imprisonment appropriate for father who failed to make child support payment due to willful refusal); Breeding v. Breeding, 515 So. 2d 374, 375 (Fla. App. 1987) (overturning on procedural grounds contempt finding where mother refused to appear in court to disclose children's location); Young v. Young, 514 N.Y.S. 2d 785, 786, 129 A.D.2d 794, 795 (1987) (upholding trial court's finding of civil contempt for impeding mother's visitation, but also holding that imprisonment for six months was excessive, although definite sentence approved); King v. Dept. of Social Services, 47 Wash. App. 816, 827, 738 P. 2d. 289 (1987) (overturning contempt by father who refused to divulge location of children to social service agency).

[51] *See infra* note 53 (discussing parental imprisonment through use of contempt orders).

[52] "[I]t is important to recognize that a threat is most effective when it produces the desired result *without having to be carried out* . . . once it has been carried out it loses its value as a deterrent or incentive . . . ." G. BELLOW & B. MOULTON, THE LAWYERING PROCESS 559-61 (1978) (emphasis in original).

[53] There are many reported cases in which parents are imprisoned for contempt for failure to afford visitation or for refusal to disclose the whereabouts of their children. *See, e.g.*, Young v. Young, 129 A.D.2d 794, 795, 514 N.Y.S.2d 785, 786 (1987) (approving prison sentence for contempt, but finding that six-month sentence was too long); Marallo v. Marallo, 128 A.D.2d 710, 710, 513 N.Y.S.2d 204, 204 (1987) (ordering mother jailed for contempt of order granting visitation rights to grandparents); King v. Dept. of Social Services, 738 P.2d

initiates a grave scenario and one that appears to serve the interests of none of the participants. Civil contempt does not serve the interests of the parties, the court, or the community.

The detriment of this approach to the custodial parent is obvious: she is required to spend her time in prison, a situation from which any number of negative consequences may flow. The most ominous aspect of her incarceration is that her sentence is an indefinite one.[54] The actual number of years served by the parent will of course differ depending upon the age of the child and the statutory age of majority in each state, but the potential sentence could run for several years, much longer than the six-month maximum sentence for criminal contempt that could have been imposed in the absence of a jury trial.[55] Moreover, while the procedural safeguards that accompany prosecution for criminal contempt will be dealt with subsequently, it is crucial to note that other than notice and an opportunity to be heard, none of the due process requirements attendant to a criminal proceeding must be observed in this, a civil

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289, 294 (Wash. App. 1987) (overturning contempt order for father who refused to divulge location of children to social service agency); Casbergue v. Casbergue, 335 N.W.2d 16, 19 (Mich. Ct. App. 1983) (suspending criminal sentence upon mother's compliance with visitation order); Schotz v. Oliver, 361 So. 2d 605, 606 (Ala. Civ. App. 1978) (upholding contempt order against mother who failed to produce child for visits with father); *People ex. rel.* Feldman v. Warden, 46 A.D.2d 256, 257-58, 362 N.Y.S.2d 171, 173-74 (1974) (affirming imprisonment of "foster" mother for failure to disclose location of child to court in custody proceeding with biological mother).

Reported cases do not, however, provide accurate information on the number of parents in Morgan's situation for two reasons. First, the reported cases, remarkably, often do not state facts sufficient to understand the reasons for the custodial parent's refusal. Second, given the standard of review, contempt cases are rarely appealed. The recent popular media provide occasional glimpses of parents in Morgan's situation: Morgan herself, Karen Newsom, Virginia LaLonde, Valerie Marcus, Dorrie Singley, and April Curtiss. *See Mothers on the Run*, U.S. NEWS AND WORLD REPORT, June 13, 1988, at 22 (reporting on April Curtiss who has run from authorities to prevent former husband from receiving visitation rights); Wilkinson, *Witchhunting in Hattiesburg*, AM. LAW., May 1988, at 104 (summarizing cases of Karen Newsom and Dorrie Singley); *What Makes Mommy Run?*, Boston Globe, Apr. 24, 1988, (Magazine), at 14 (describing plight of mothers who have hidden children from allegedly abusive fathers including Valerie Marcus and Virginia LaLonde).

[54] The sentence is "indefinite" because it is not possible to know exactly when the sentence will end. One could argue that the sentence technically is a "definite" one since once the child reaches the age of majority, a custody order would become obsolete. The same argument could, however, be made with respect to the federal civil contempt statute, 28 U.S.C. § 1826(a) (1982), since it provides for release of the recalcitrant witness at the end of the term of the grand jury or 18 months, whichever comes first. I am unaware of any comment questioning the civil nature of contempt under this statute for that reason. Any civil contempt sentence is in some sense definite if one can foresee a future event that would make compliance impossible, as in this case and in grand jury proceedings.

[55] *See* Duncan v. Louisiana, 391 U.S. 145, 162 (1968) (holding that defendant is entitled to jury trial for crime punishable by two-year imprisonment); Bloom v. Illinois, 391 U.S. 194, 211 (1968) (mandating jury trial for criminal contempt punished by two-year prison term); Cheff v. Schnackenberg, 384 U.S. 373, 380 (1966) (imposing maximum six month sentence for contempt without a jury).

matter.[56] Thus, the combination of an indefinite, potentially lengthy, sentence coupled with a lack of procedural safeguards, implicates serious constitutional concerns.[57]

Additionally, the custodial parent suffers the torment peculiar to all incarcerated parents: separation from her child. In this case, however, the torment is heightened by the inestimable fears, lack of knowledge, and lack of information concerning the child's precise location and welfare. Nor can the physical separation be ameliorated by regular (or irregular) visits from or telephone contact with the child. For the same, obvious reasons, contact by mail is certainly limited if at all possible.

One sees that the noncustodial parent—the person whose rights civil contempt is designed to protect—in many instances fares no better after contempt sanctions than prior to the action for contempt. If the allegations of abuse or harm to the child are in fact true, and the child is available for visitation, the opportunity for abuse continues. It is impossible for one to argue that an interest in continued abuse of the child is one that deserves legal protection. Whether or not the allegations are true, however, the noncustodial parent's interest in contact with the child presumes that the child's location is known to the noncustodial parent. Given sufficient time and resources, it is probable that a custodial parent who is willing to face prison in order to protect her child will make arrangements to place the child in a location beyond the reach of the noncustodial parent.[58] Under this scenario, one parent is incarcerated, and the other parent, the supposed "beneficiary" of the contempt proceeding and resulting incarceration, has no more access to the child than before the custodial parent's imprisonment.

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[56] In Elizabeth Morgan's case, for example, the hearing was closed to the public, over her objections, and the record of the proceeding is sealed. The court has also ordered the parties not to reveal any information about the hearing to the public. On appeal, the court held that the trial court had erred in failing to make specific findings on the issue of closure, and remanded to enable the lower court to remedy its error. In dicta, however, the appellate court stated that the right to a public hearing was not absolute in the evidentiary phase of a civil contempt proceeding involving the custody of children, and that "our examination suggests that the record would support closure in this case." Morgan v. Foretich, 521 A.2d 248, 253 (D.C. 1987).

[57] Despite the notion that release is within the power of the contemnor herself, the deprivation of a person's liberty is viewed by this legal system to be such a serious harm that the lack of procedural safeguards has been a major issue for commentators. R. GOLDFARB, *supra* note 42, at 230-35.

The issue of due process is even more worrisome when one considers that the determination to hold a party in contempt is largely discretionary and as a consequence, appellate courts, applying an abuse of discretion standard, rarely overturn a trial court's contempt order. *See* Morgan v. Foretich, 546 A.2d 407, 410 (D.C. 1987) (holding lower court's decision binding unless clearly erroneous), *cert. denied*, 109 S. Ct. 39 (1989).

[58] Monetary resources in this context will undoubtedly make the resolution easier. There is nothing to suggest, however, that parents who place their children in hiding, or who live in hiding with them, are persons of considerable means. The "underground" network of persons who assist custodial parents on the run may operate on a shoestring, but according to Faye Yager, no one is turned away for lack of resources. Telephone Conversation Between

The child is potentially by far the most damaged party. The use of civil contempt appears to produce little by way of promoting the child's welfare. The imprisonment of the custodial parent is traumatic in and of itself. It may be coupled with the guilt that children often feel in situations of domestic strife in which they blame themselves and feel responsible for family disharmony. It is possible that the child may be cared for by a loving third party, or perhaps by the noncustodial parent, and assuming that abuse has not in fact occurred, such an arrangement might be beneficial to the child. Other scenarios arise, however. It is possible that the abuse is real, and now the opportunity for further abuse of the child exists without the possibility of interference or protection by the now-incarcerated custodial parent. A second possibility, the one chosen by Elizabeth Morgan, is that the child live in hiding. Such an "underground" existence isolates the child from contact with both parents and forces the child to live in an alien and insecure environment.[59]

Finally, to the extent that the legal system and society at large can be deemed to have an interest in this situation, both appear to suffer. The legal system finds itself in paradoxical positions in several ways. First, the use of civil contempt is conceptually unsuitable in custody situations. The courts have long abandoned haggling over children as though they were merchandise to whom one or the other

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Faye Yager, Member of Mothers Against Raping Children (MARC), and Gayle Middleton, August 18, 1988.

[59] Resources exist to help mothers who believe they must flee with their children, or arrange for the children to flee alone, in the form of groups such as Mothers Against Raping Children (MARC). The similarity of this predicament with that of slaves escaping from the pre-Civil War South is expressed in the term "underground railroad." In commenting on life underground, the supposed similarity, and one real difference, one writer stated, "[m]ore costly . . . is the physical and psychological damage . . . ." Typically, the mother is paralyzed by anxiety, the children traumatized by indefinite separation from home, school, parents, friends, and pets. "The "underground railroad' as a phrase has one fatal weakness for these women and children," says Louise Armstrong, author of two books on incest. "There is no North." *What Makes Mommy Run?*, *supra* note 53, at 42.

Custodial parents fleeing with their children is a phenomenon intimately tied to the use of contempt and incarceration for parents who violate court orders. Some parents, like Morgan, may choose jail; many more, preferring to avoid imprisonment, opt to live underground with the child. Statistics on the prevalence of this practice are difficult to obtain, since secrecy is inherent and the networks try to remain as invisible as possible. Faye Yager of MARC, only one in a web of individuals who place women and children in safe homes, estimates that she herself provides service to approximately 100 parents with children every four months. *See Mothers on the Run*, *supra* note 53, at 52; Telephone Conversation Between Faye Yager and Gayle Middleton, August 18, 1988.

party had certain rights.[60] Yet it is the civil side of contempt that takes a rights-based approach to the problem of the recalcitrant parent. Secondly, the custodial parent was chosen by the court because it believed that such a decision was in the best interests of the child.[61] Now, in a feeble attempt to make sure that the child's best interests are being served, the remedy all but assures the opposite result. It could be argued that the best interests test is applicable only to the initial custody determination, and not to enforcement of the custody order itself. Such an argument, however, seems to be splitting hairs and overly legalistic. It makes no sense to recognize the validity of the best interests standard in the initial determination and then to ignore it in any subsequent actions, especially if the result of those actions operates against the best interests of the child. Third, the best interests of the child are served by a custodial parent who acts to protect a child from harm.[62] Even if the belief is a false one, it is the duty of the custodial parent to do whatever is necessary for the child's protection. After giving such responsibility to a custodial parent, the court must then place itself in the awkward position of incarcerating her for taking seriously her custodial responsibilities.

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[60] H. CLARK, *supra* note 9, at 786-77 (noting that while both mother and father are equal candidates for custody, focus is on what is in the best interests of the child).

[61] *Id.* at 797.

[62] Harm may be either actual or potential. One would expect, for example, that the custodial parent would not place a child in situations in which harm to the child was certain to occur. Thus, a parent would not place a child in the path of a speeding vehicle, because the parent knows that the child would be in danger. Custodial parents are expected to further protect their children, however. A responsible parent entrusted with the care of her child would also not permit the child to play by the side of the road. Even though harm may not be *certain*, it is *possible*; the prudent caretaker must therefore guard the child against potential, as well as actual, harm. Nor do we expect the custodial parent to "play the percentages." One would not expect a parent to leave her child in the care of a babysitter whom the parent *knows* to be a child abuser, but what if the parent is not 100% certain? If the parent were to estimate that the probability of abuse to the child were only 50%, or even 10%, we expect the possibility of harm to be sufficient reason for the parent to refuse the services of the babysitter. Moreover, we would *expect* the parent to refuse. Failure to adequately supervise children may constitute neglect and provide the state with sufficient reason to remove the child from the parent's custody. *See* OR. REV. STAT. § 163.545 (198) (providing that persons having custody of a child under the age of ten years may be found guilty of criminal neglect, if, with criminal negligence, she leaves the child unattended or in a place likely to endanger the health or welfare of the child); Wald, *State Intervention on Behalf of "Neglected" Children: Standards for Removal of Children from Their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights*, 28 STAN. L. REV. 625, 700-06 (1976) (proposed legislation authorizing removal of a child if a child has suffered an actual injury, or there is a substantial risk of such harm to the child, as a result of conditions uncorrected by the parent or because of the parent's failure to supervise and protect her); The Joint Commission on Juvenile Justice Standards, of the Institute of Judicial Administration and the American Bar Association (incorporating the previous proposed standard and providing for state intervention when a child has been sexually abused "by another person where the parent knew or shild have known and failed to take appropriate action." *State v. Goff*, 675 P.2d 1093 (Or. Ct. App. 1984) (parent acquitted of criminal negligence in the absence of evidence establishing knowledge of substantial risk to children).

From a societal point of view, the situation is equally untenable. The society as a whole does not benefit from incarcerating a custodial parent for an indefinite term. It is the custodial parent whom the society expects will take on the responsibilities of child rearing. The immediate costs inherent in removing the custodial parent from the role of caretaker (the need for another caretaker, private or public) are obvious. Long-term, hidden costs are more speculative. Particularly if the child is placed in hiding by her custodial parent as in the *Morgan* case, one is left to wonder about the long-term effects of disruption of education, lack of adequate health care for fear of being discovered, and the psychological toll on the child's well-being. What societal resources may be called upon to perform the task of nurturing, and the task of dealing with those children for whom nurturing became impossible by dint of their custodial parent's imprisonment?

Moreover, one could argue that it is the irresponsible parent, the one who fails to protect her child, who is costly to the community. Sexual abuse victims may require, at a minimum, the resources of the mental health profession.[63] In addition, while long-term effects of sexual abuse of children are still not completely known, research shows that children who were sexually abused may be unable to form appropriate marital and parental relationships in adult life.[64] To the extent, then, that society uses the law to send a message to the public, the message is that self-risk in the protection of one's child is not valued, and in fact, may harm both the parent and child.

An argument could be made that the draconian nature of civil contempt, particularly in this context, has already been softened by general developments in the law of civil contempt. For the contemnor, like Morgan, who refuses to purge herself by complying with the court order, there is another possibility for release. Since the purpose of incarceration is to force the contemnor to obey, once incarceration loses its coercive power, there is no reason for the incarceration to continue. Courts, therefore, have released persons under the belief that continued imprisonment will not have the desired effect of persuading the contemnor to abide by the order.[65]

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[63] Short term effects of sexual abuse on young victims include self-destructive behavior, anxiety, depression, impaired ability to trust others, guilt, delinquent behavior including truancy, and sexually inappropriate behavior. Browne and Finkelhor, *The Impact of Child Sexual Abuse: A Review of the Research*, 99 PSYCHOLOGICAL BULL. No. 1 66, 66-68 (1986).

[64] *Id.* at 69-72.

[65] *See, e.g.*, King v. Department of Social Services and Health, 47 Wash. App. 816, 826,

While somewhat incongruous, the contemnor can therefore secure her release not by changing her mind, but by holding ever more firmly to the original belief that resulted in her imprisonment in the first place. A second "safety valve" is the willingness of some courts to find a potential contemnor to be innocent of contempt because if motivated by feelings as intractable as those of Morgan, she may be said to be "unable" to comply with the court order. Inability to comply has always been a defense to a charge of civil contempt.[66]

The first possibility, that the contemnor can secure her release by remaining ever more immovable in her refusal to obey, has been successfully claimed by contemnors in some cases.[67] As a general rule, however, this is a difficult task. The test requires the contemnor, as a threshold, to prove a state of mind, not an impossible but always a difficult endeavor.[68] Moreover, not only must the court be convinced of the sincerity of the contemnor's belief, it must also make an independent judgment as to whether continued imprisonment will effect a change of heart. In other words, the court may believe that the contemnor's original belief is sincere and that she also believes that additional time in jail will do nothing to dissuade her. Nevertheless, the court can still disagree with her and find that continued incarceration is substantially likely to coerce her to comply at some point.[69] Secondly, the court's decision on this issue is

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738 P.2d 289, 294 (1987) (finding that contemnor's confinement had become punitive after eleven months' confinement for refusal to disclose location of child); *In re* Parish, 613 F. Supp. 356, 357 (S.D.N.Y. 1985) (finding no realistic possibility that continued confinement would cause contemnor to testify); *In re* Dohrn, 560 F. Supp. 179, 183 (S.D.N.Y. 1983) (noting that release of contemnor justified because recalcitrance would have continued); *In re* Farr, 36 Cal. 3d 577, 584, 111 Cal. Rptr. 649, 654 (Cal. Ct. App. 1974) (concluding that it was necessary to determine point at which confinement ceased to serve coercive purpose).

[66] *See* Maggio v. Zeitz, 333 U.S. 56, 72-73 (1947) (stating that coercive contempt order should not issue when no willful disobedience exists).

[67] *See supra* note 65 (listing successful cases); *see also In re* Papadakis, 613 F. Supp. 109, 109 (S.D.N.Y 1985) (finding no realistic possibility that further confinement would induce testimony).

[68] *See* Simkin v. United States, 715 F.2d 34 (2d Cir. 1983). In *Simkin*, the Second Circuit enunciated a standard judges can use to determine if a civil contempt sanction has lost its coercive effect. The judge must make "a conscientious effort to determine whether there remains a realistic possibility that continued confinement might cause the contemnor to testify." *Id.* at 37. Moreover, the burden rests with the contemnor to demonstrate that no such realistic possibility exists. *Id.* *See also* Lambert v. Montana, 545 F.2d 87, 95 (9th Cir. 1976) (noting that contemnor has burden of proving that continued confinement will not cause him to change his mind and testify).

[69] United States v. Dien, 598 F.2d 743, 745 (2d Cir. 1979). In *Dien*, the Second Circuit explained that "[e]ven if the judge concludes that it is the contemnor's present intention never to testify, that conclusion does not preclude the possibility that continued confinement will cause the witness to change his mind." *Id.* In *In Re* Parrish, the court stated:

> [t]he contemnor may conscientiously believe at the time he testifies that incarceration will not coerce him into compliance, but the issue is not whether *the contemnor* believes there is no realistic possibility that continued confinement might cause him

"virtually unreviewable."[70] Finally, while at some point the refusal to be coerced may provide release for the contemnor, she is still incarcerated for what could be a substantial period of time. The problems inherent in the use of civil contempt are not really ameliorated, but rather, they continue to exist albeit for a relatively shorter period.

The second possibility, that persons in Morgan's shoes should be found to be "unable" rather than "unwilling" to comply, presents interesting possibilities. Such an approach does not seem to have found much favor, however, nor is it likely to. Science and social science might be able to provide evidence of biological instinct or social mores so strong that a custodial parent would find any conduct other than protection of the child to be impossible, but to date, the lack of reported cases indicates that this has been either an untried or an unsuccessful defense.

The best that can be said about the use of civil contempt in recalcitrant custodial parent situations is that when it works, it works. Data are not available to indicate how many parents have backed down when faced with a contempt charge; it is not unheard of for some to give up after a period of incarceration.[71] As the *Morgan* case demonstrates, however, some parents will not feel themselves able to betray their ideals and their children. Goldfarb has written that "[i]n contempt cases . . . , where the issues are grounded in deep personal ideals, there is little hope of inducing a moral change. While it is not necessarily bad for man to suffer for his convictions, . . . it is cruel and onerous to continue his punishment indefinitely."[72] When the threat of prison or prison itself fails to move a parent into compliance, the result is an abhorrent one in which everyone loses, most of all the child whose best interests the court must always protect.

> to testify; rather, if whether *the district judge* believes, based on all the circumstances pertinent to that contemnor, that no such realistic possibility exists.

In Re: Parrish, 613 F. Supp. 109 (S.D.N.Y. 1985). *See also In re* Crededio, 759 F.2d 589, 593 (7th Cir. 1985) (affirming lower court's determination that confinement had not lost its coercive nature); *In re* Cantazaro, 663 F. Supp. 1, 2 (D.D.C. 1985) (affirming decision to deny release of contemnor because judge was not convinced that continued incarceration would not coerce contemnor to testify). *But see* Sanchez v. United States, 725 F.2d 29, 31 (2d Cir. 1984) (holding that contemnor was not required to demonstrate unusual circumstances for failure to testify).

[70] Simkin v. United States, 715 F.2d 34, 38 (2d Cir. 1983).

[71] *See* Wilkinson, *supra* note 53, at 105 (reporting that Karen Newsom relented after a month in jail after alleging her husband was molesting their daughter).

[72] R. GOLDFARB, *supra* note 42, at 55.

III. CRIMINAL CONTEMPT

Criminal contempt is another remedy available to courts in these situations. Courts could, in lieu of charging the person with civil contempt and thereby attempting to coerce compliance, shift their focus and view the matter as one in which punishment is the objective.[73] From the contemnor's point of view, there are two advantages to the use of criminal rather than civil contempt. First, criminal contempt brings with it a definite sentence. Secondly, a charge of criminal contempt requires the procedural safeguards that are noticeably absent in a civil contempt proceeding.[74] These include notice of the charge and a specific characterization of the criminal nature of the charge, the right to adequate time to prepare a defense and the right to an attorney.[75] Contemnors also have the right to have witnesses testify in their behalf.[76] Constitutional protections from double jeopardy and from self-incrimination apply, and contemnors must be found guilty beyond a reasonable doubt.[77] Perhaps most significantly, the Supreme Court has held that in both federal and state criminal contempt proceedings the accused has the right to a jury trial for other than petty offenses, defined as one for which the sentence is less than six months.[78] Another important distinction between civil and criminal contempt is that criminal contempt is subject to executive pardon while civil contempt is not.[79] Thus, criminal contempt appears to eliminate the due process questions that plague the use of civil contempt and to result in a definite, and perhaps shorter, sentence.[80]

These two advantages, as significant as they might be, do little, however, to address the other problems discussed in connection with civil contempt. Incarceration of the custodial parent produces all of the same problems for her, the child, and the noncustodial parent. With the exception of a possible shorter sentence, none of the parties will care, from a practical point of view, whether the proceeding is deemed civil or criminal. The hardships will be the same. Moreover, the message implied in incarceration for criminal contempt is perhaps even stronger, and less appropriate than that sent by the courts in civil contempt proceedings: acting to protect one's child results in criminal incarceration and is viewed by the legal system as an act deserving punishment.

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[73] This is not to suggest that the court must choose between civil and criminal contempt, as it is possible for the court to use both. *See* R. GOLDFARB, *supra* note 42, at 48.

[74] *See* Shillitani v. United States, 384 U.S. 364, 371 (1966) (noting that contemnor's defiance justifies lack of procedural safeguards of civil contempt).

[75] United Mine Workers v. United States, 330 U.S. 258, 298-301 (1947).

[76] Cooke v. United States, 267 U.S. 517, 537 (1925).

[77] Gompers v. Buck's Stove and Range Co., 221 U.S. 418, 444 (1911).

[78] *See* Duncan v. Louisiana, 391 U.S. 145, 159-62 (1968) (analyzing historical basis for holding petty offenses not subject to sixth amendment jury trial provision); Bloom v. Illinois, 391 U.S. 194, 210 (1968) (ruling that petty crimes need not be tried by jury); Cheff v. Schnackenberg, 384 U.S. 373, 380 (1966) (holding that federal courts may not impose sentence longer than six months for criminal contempt absent jury trial or waiver).

[79] R. GOLDFARB, *supra* note 42, at 48.

[80] Ironically, as one student commentator noted, "as restrictions have accrued upon the power to punish criminal contempt, there has been increasing resort to the less inhibited coercive contempt sanctions. Hence the undiscriminating classification of the latter as a civil remedy may conceal the need for adequate safeguards." Note, *supra* note 40, at 102. Given that courts can, in a given situation, choose the charge, it is evident that it is administratively easier for the court to charge the contemnor with civil, not criminal, contempt. It is important to realize then that criminal contempt is an option *of the court*, and that procedural safeguards can then be bestowed or not, depending on what the court chooses to call the proceeding.

IV. THE NECESSITY DEFENSE

Having established that the use of civil contempt is a problematic solution to a parent who believes herself to be acting to protect her child, and having seen that the use of criminal contempt, though perhaps more sensitive to the contemnor's constitutional rights, may be just as unworkable, what should courts do with the recalcitrant custodial parent? The following sections will examine the doctrine of necessity, apply it to the present situation, critique the analysis of the Alaska Court of Appeals in *Gerlach v. State*,[81] and examine what custodial interference statutes may or may not contribute to solving the problem.

The common law defense of necessity is somewhat vague in definition, varied in application, of questionable effectiveness, and a source of discomfort to judges who must grapple with it.[82] Generally speaking, the defense of necessity is available to those who can assert that they engaged in an unlawful act to avoid an even greater harm.[83] The defense finds its underpinnings in natural law and to some extent in utilitarian philosophy.[84] Given the tension between the philosophical roots of the necessity defense and the rationale for a system of criminal justice, it is not surprising that while necessity has been part of Anglo-American jurisprudence for some time,[85] its use has been restrictive.[86]

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[81] 699 P.2d 358 (Alaska Ct. App. 1985). In *Gerlach*, the court applied and rejected a defense of necessity in a criminal prosecution for custodial interference.

[82] The confusion surrounding the necessity defense, even as it haltingly grows more acceptable, was recognized by the Supreme Court in United States v. Bailey, 444 U.S. 394 (1980), where the Court stated that, "in explaining the reasons for our decision, we find ourselves in the position akin to that of the mother crab who is trying to teach her progeny to walk in a straight line, and finally in desperation exclaims, 'Don't do as I do, do as I say.'" *Id.* at 397. *See also* Note, *Necessity Defined: A New Role in the Criminal Defense System*, 29 U.C.L.A. L. REV. 409, 410 (1981) (citing *Bailey* as representing reluctance of courts "to base a decision on the necessity principle.").

[83] United States v. Richardson, 588 F.2d 1235, 1239 (9th Cir. 1978), *cert. denied*, 441 U.S. 931 (1979); Arnolds & Garland, *The Defense of Necessity in Criminal Law: The Right to Choose the Lesser Evil*, 65 J. CRIM. L. & CRIMINOLOGY 289, 291 (1974). *See also* Note, *supra* note 82, at 438 (analyzing necessity defense in terms of cost benefit analysis).

[84] *See* Surocco v. Geary, 3 Cal. 69 (1853) (stating that one can destroy property if such action will prevent disaster).

This defense has been raised in a wide range of factual settings. In recent times, the defense has been asserted in cases involving political protest,[87] escape from prison,[88] kidnapping and reprogramming members of religious cults,[89] and possession and use of marijuana.[90] Courts have sought, from time to time, to exclude certain categories of cases from the reach of the necessity defense,[91] usually over concerns of morality (as in cases involving the taking of a life) or excessive concern for deterrence (economic crimes, for which, in a capitalist system, deterrence is paramount, and crimes involving prison escape, for which public safety is the issue).

The elements of the defense vary from jurisdiction to jurisdiction; some states have codified the defense.[92] For the sake of discussion, the definition of necessity will be that set forth in the Model Penal Code:

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[85] *See, e.g.*, The Case of the King's Prerogative in Saltpetre, 12 Co. Rep. 17, 77 Eng. Rep. 1294 (1607) (taking of saltpeter was necessary for making gunpowder and defense of realm); The Queen v. Dudley and Stephens, 14 Q.B.D. 273, 286 (1884) (rejecting utilitarian rationale justifying taking innocent life for food for survival); United States v. Holmes, 26 F. Cas. 360, 368 (C.C.E.D. Pa. 1842) (No. 15,383) (precluding consideration of necessity defense for manslaughter for sailors' throwing of passengers off overcrowded lifeboat).

[86] Note, *supra* note 82, at 410-16 (providing historical analysis of necessity defense).

[87] United States v. Simpson, 460 F.2d 515, 518 (9th Cir. 1972) (holding that common law justification was not available because defendant's action was not unreasonable); Commonwealth v. Capitolo, 508 Pa. 372, 381, 498 A.2d 806, 809 (1985) (holding necessity defense not available to nuclear protestors); State v. Warshow, 138 Vt. 22, 25, 410 A.2d 1000, 1002 (1979) (concluding that evidence of danger of nuclear accidents does not fulfill imminent and compelling harm element of necessity defense); State v. Dorsey, 118 N.H. 844, 847, 395 A.2d 855, 857 (1978) (upholding criminal trespass for failure to establish statutory defense of "competing harms").

[88] People v. McKnight, 626 P.2d 678, 684 (Colo. 1981) (en banc) (rejecting "choice of evils" defense of escapes); Commonwealth v. Clark, 429 A.2d. 695, 698 (Pa. Super. 1981) (finding that adverse prison conditions do not support necessity defense to charge of prison escape); People v. Lovercamp, 43 Cal. App. 3d 823, 831, 118 Cal. Rptr. 110, 115 (1974) (enunciating limited defense of necessity for prison escapees).

[89] People v. Patrick, 126 Cal. App. 3d 952, 960, 179 Cal. Rptr. 276, 281 (1981) (finding that cult reprogrammer did not meet elements of necessity defense).

[90] State v. Diana, 24 Wash. App. 908, 916, 604 P.2d 1312, 1317 (1979) (applying medical necessity defense to use of marijuana for multiple sclerosis. *See also* Note, *Medical Necessity as a Defense to Criminal Liability: United States v. Randall*, 46 Geo. Wash. L. Rev. 273, 276-78 (1978).

[91] *See* Note, *supra* note 82, at 419-23 (discussing cases involving homicide, economic crimes (from stealing a loaf of bread to prevent starvation to the modern equivalent: welfare fraud), and emergencies caused by actor herself).

[92] *See, e.g.*, Colo. Rev. Stat. § 18-1-708 (1986 & Supp. 1988); Ill. Rev. Stat. ch. 38, para. 7-13 (1972 & Supp. 1988); Ky. Rev. Stat. Ann. § 503.030 (Baldwin 1984 & Supp. 1988); N.H. Rev. Stat. Ann. § 627:3 (1986 & Supp. 1988); N.Y. Penal Law § 35.05 (McKinney 1987 & Supp. 1989); 18 Pa. Cons. Stat. Ann. § 503 (Purdon 1983 & Supp. 1988).

> Section 3.02 Justification Generally: Choice of Evils
>
> (1) Conduct that the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable, provided that:
>
> (a) The harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and
>
> (b) neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and
>
> (c) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.
>
> (2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct, the justification afforded by this Section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.[93]

The first element of necessity is the heart of the defense. Applying it to the case of the recalcitrant custodial parent, she must believe that violating the court order is necessary in order to prevent harm to the child. This is somewhat in accord with case and statutory law in many jurisdictions that state that the conduct chosen must be the only alternative available, except that the Code requires only that the actor *believe* that the chosen conduct is the sole avenue open to her.[94] If the standard is a subjective one, as set forth in the Model Penal Code, the court would look at all of the facts to make a determination of the sincerity of the custodial parent's belief. A finding by the court that she believed that violation of the court order was "necessary" (i.e., there was no other course open to her) is the first step in finding her conduct justified.

In some jurisdictions, this subjective standard is not part of the necessity defense; in its stead is an objective, rather than subjective, test.[95] Under an objective standard, the custodial parent must prove that there was nothing else she could do. Obviously, the task of proving no *actual* alternatives is a more difficult one.

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[93] MODEL PENAL CODE § 3.02 (1985).

[94] Note, *supra* note 82, at 416-17 n.42 (identifying New York, Delaware, Illinois, New Hampshire, Oregon, and Pennsylvania as states enacting necessity defense statutes).

[95] *See* Gerlach v. State, 699 P.2d 358, 360 (Alaska Ct. App. 1985) (giving objective determination to decide if defendant's judgment was correct); *see also* Note, *supra* note 82, at 428-29 n.95-96 (listing states that have enacted necessity defense statutes).

In *Gerlach v. State*,[96] for example, a mother hid her daughter out of state for over a year in violation of a modified custody agreement that gave temporary custody of the child to her estranged husband. The court held that Gerlach could not defend the charge of custodial interference with necessity.[97] Despite Gerlach's concerns about her financial situation and her ability to continue to pay for her lawyer's services, the court reasoned that the defense was inapplicable because the parent had another alternative—the court.[98]

Assuming an objective test, rather than that suggested by the Model Penal Code, the reasoning of the court in *Gerlach* on this point is troubling. Every jurisdiction has enacted laws dealing with the custody and protection of children and a court system for resolving these matters.[99] If the court's reasoning in *Gerlach* holds sway, it is difficult to imagine how the defense would ever be applicable in those jurisdictions that adhere to the more stringent, objective test. Two possibilities exist, however; one within the confines of the *Gerlach* holding and the other requiring a rejection of the *Gerlach* rationale.

Even within the logic of the *Gerlach* opinion, the holding is not as universally applicable as it may first appear. First, it assumes that litigation is still an alternative. Thus if the custodial parent could make a showing that she has exhausted her remedies at law, the legal system would have no other alternative to offer her. Going to court and losing, therefore, may be a prerequisite to a successful necessity defense.[100] Secondly, for unknown reasons, the court simply ignored Gerlach's financial plight. It is indisputable that access to the court system is not free; poverty may act as a barrier to the theoretical availability of the legal system as a real alternative. Particularly in domestic cases, in which contingent fee arrangements are impossible, many potential consumers of the court system are left waiting at the courthouse door.[101] Third, if the legal system is to be touted as offering an alternative to the custodial parent, a more careful analysis of this point must be made. If, for example, as in *Gerlach*, a modification proceeding is viewed as an alternative, one needs to examine the timeliness and efficacy of this option. Availability might depend on the congestion of the court, the accessability of the judge, and the provisions of the law regarding temporary orders. A modification proceeding may be an alternative. A modification proceeding with a hearing scheduled three weeks or months into the future and a bond requirement for a restraining order may *not* be a viable alternative. All of the foregoing does not reject the rationale of the court in *Gerlach*, but it does suggest that a court must probe more deeply into the facts in order to separate real from illusory alternatives.

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[96] 699 P.2d 358 (Alaska Ct. App. 1985).

[97] *Gerlach*, 699 P.2d at 363.

[98] *Id.* at 362.

[99] *See* H. CLARK, *supra* note 9, at 791-849 (reviewing remedies and procedures for custody of children).

[100] *But see* Ladner v. Ladner, 206 So. 2d 620, 624 (Miss. 1968). In this case, the court held that evidence previously raised in a court proceeding could not form the basis for a defense to a charge of contempt against a father who violated an order granting visitation rights to the mother. *Id.* The argument appears to be a sort of estoppel; if the court did not find it persuasive in the prior proceeding on the merits, it will not revisit the same evidence in the contempt proceeding.

[101] Statutes allowing recovery of attorney fees from the opposing party in domestic actions may make this argument less persuasive. In many situations, however, those statutes make an award of fees discretionary, not mandatory. *See* FLA. STAT. § 61.16 (1984) (giving court discretion to order party to pay reasonable attorney's fees). In theory, this may make

A second argument is that the court's finding in *Gerlach* (i.e., that the legal system provides an alternative) was simply wrong; it fails to reflect an understanding of why parents are taking drastic measures to avoid the legal system. The real problem is that the legal system is not functioning effectively in situations such as these. Even assuming that one can pay for access to the legal system and therefore, financial ability is not an issue, it is ludicrous to think that custodial parents choose an underground existence for themselves and their children unless they have found the law lacking. The problems with proving a case in court set forth at the beginning of this article may mean that not only does the lack of alternatives exist in the mind of the custodial parent, it exists in fact.[102]

The importance of the Model Penal Code approach, then, is that it would not seek to punish the parent who acts under a good faith belief that she chose the only course open to her. In jurisdictions that require an objective test on the element of availability of other alternatives, the *Gerlach* reasoning may make this a more difficult, though not impossible, element to satisfy.

The second element of the Code's definition of the defense is that the action taken must be for the purpose of avoiding a harm or evil. Again, the Code would find the custodial parent's conduct justified whether or not the harm actually exists as long as she acts on the good faith belief that it does. This is not very different from the law in jurisdictions that hold that the harm sought to be avoided need not be actual; a reasonable belief is sufficient.[103] Assuming a subjec-

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attorneys available to those who could not otherwise afford them. In practice, however, the potential award of attorneys' fees may have little effect.

[102] *See supra* notes 8-39 and accompanying text (discussing custodial parent's lack of available alternatives).

[103] *See* People v. Manson, 61 Cal. App. 3d 102, 206, 132 Cal. Rptr. 265, 329 (1976)

tive test, the custodial parent is relieved from the burden that may have caused the situation initially—proof that abuse by the other parent did in fact occur. In jurisdictions requiring a "reasonable" belief, what is "reasonable" will depend of course on the circumstances. This standard would, therefore, probably prevent the application of the necessity defense when no evidence, or extremely weak evidence, of abuse exists.[104]

The final component in the Code's definition of the defense is the recognition that one may act to protect another as well as one's self. Thus it is legitimate for the custodial parent to act to protect her child even if she herself is in no danger. Defense of others as opposed to defense of self appears to be a non-issue in the context of the necessity defense. American courts have long recognized that one may assert the defense in cases in which the actor has sought to help third parties.[105]

The Model Penal Code next lists three caveats. The first is that the harm sought to be avoided is greater than that sought to be prevented by the law defining the offense charged. Defining the harm sought to be avoided is relatively easy: sexual abuse of the child. The harm sought to be prevented by the law defining the offense is more difficult because it may be subject to more than one interpretation. What harm, for example, does a law (or the provisions of the court order itself) requiring compliance with the court order establishing visitation rights seek to avoid? Disrespect for the court? Disorderly administration of domestic affairs? Deprivation of the parent/child relationship? Assuming that one can ascertain the precise harm caused by the custodial parent (or perhaps one would need to balance each of them), the next inquiry is how to decide which is worse? Should courts, for example, look at the penalties assigned to each, i.e, a felony can be avoided by committing a mis-

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(noting that defense of compulsion requires evidence that accused acted on reasonable cause and belief that her life was in danger), *cert. denied*, 430 U.S. 986 (1977); *see also* Note, *supra* note 82, at 428 n.95 (giving examples of statutes including Arkansas, Georgia, Idaho, Minnesota, Montana, and Washington).

[104] The prospect of a custodial parent maintaining a good faith belief of abuse in the absence of any evidence of any kind pushes the necessity defense to its limits. It may raise the question of why the custodial parent should be found innocent of contempt and therefore take from the other parent what is perceived to be the only teeth in the order itself—the possibility of enforcement. The consideration of the Model Penal Code is one of culpability, and therefore, whether the actor is mistaken or not, the Code does not contemplate punishment for those who act in good faith.

[105] *See* Surocco v. Geary, 3 Cal. 69 (1853) (holding that administrator could destroy property for benefit of populace). Many of the cases in which necessity has been raised in connection with acts of political protest involve assisting third parties. *See supra* note 87 (citing political protest cases involving necessity defense).

demeanor, but not vice versa? And what if the "harm done" is not a crime at all?

The court in *Gerlach* sheds some light on how courts interpret—or misinterpret—this element. The court found against the defendant on this issue. With little explanation, the court held that the possibility of child abuse was of less consequence than the harm to the noncustodial parent, which was the foregoing of visitation rights. It is difficult to understand the court's logic, other than to view it as a blatant preference of parental rights over those of the child. While defining the harms and balancing them may not be an easy task, this case seems to present a less troublesome task than most. The rights of the noncustodial parent to see the child, perhaps the most compelling of all of the possible rights being protected, seem to pale by comparison to the child's right to personal integrity and safety. The court in *Gerlach* might have done well to look at the history of the | ②law's intent in providing for visitation rights. The law has long since abandoned its focus on the rights of parents in custody and visitation determinations and is now guided by the best interests of the child. Thus, in balancing between avoidance of harm to the noncustodial parent versus avoidance of possible harm to the child, it would be consistent with general principles of child custody law to undervalue the parents' rights to visit.[106]

The two remaining caveats in the Code—that no other specific statute defining defenses exist and that the legislature cannot have excluded the application of the defense to the particular situation—are easier to determine and will vary more widely among jurisdictions. Unfortunately, or fortunately, for the recalcitrant custodial parent, many states have enacted statutes prohibiting custodial interference.[107] The existence and language of those statutes, whether they may help or hurt, have made the question of the applicability of the necessity defense in these cases a little murkier.

V. CUSTODIAL INTERFERENCE STATUTES

As previously explained, some states have sought to limit the scope of the necessity defense by excluding certain kinds of cases from its application.[108] Accordingly, states could prohibit, by statute or by common law, use of the necessity defense in cases involving custodial parents who violate court orders or otherwise interfere with the visitation rights of a noncustodial parent. Given the relatively few categories of cases so excluded, this appears unlikely.

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[106] *See* Beckham v. O'Brien, 176 Ga. App. 518, 519-20, 336 S.E.2d 375, 377 (1985). The court in *Beckham* was eloquent in its defense of the child's rights in this situation. A factual difference, *i.e.*, the father's indictment for molesting his daughter, persuaded the court not to hold the mother in contempt despite the assertion by the father of the presumption of innocence. *Id.* at 522, 336 S.E.2d at 377.

[107] *E.g.*, ALASKA STAT. § XI (1983) (making custodial interference first degree class C felony).

Nonetheless, some states have responded to a growing public awareness of the problem of enforcing court orders in domestic cases by enacting what will be generically called "custodial interference" statutes.[109] They are germane here because in some instances, they provide a legislatively-sanctioned statutory necessity defense to the crime of custodial interference and therefore recognize the realities of a situation akin to that in *Morgan*. On the other hand, these statutes may, unwittingly perhaps, limit the use of the common law, or generic statutory necessity defenses. For purposes of discussion, this Article will examine two such representative statutes, one from the District of Columbia and one from the State of Florida.

The newly-enacted District of Columbia statute provides in pertinent part: "No parent, or any person acting pursuant to directions from the parent, may intentionally conceal a child from the child's other parent."[110] It further provides that: "No person violates this act [subchapter] if the action: (1) is taken to protect the child from imminent physical harm."[111] The statute goes on to provide that a person who violates section 16-1022 and who wishes to avail herself of the defense set out in section 16-1023 must file a petition in the court seeking modification of the court order (or seeking a court order itself if one does not exist) and must state that "at the time the act was done, a failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child . . . ."[112] Further, the statute provides that if the petition is filed "a finding by the court that, at the time the act was done, a failure to do the act would have resulted in a clear and present danger to the health, safety, or welfare of the child is a complete defense to prosecution under this act."[113]

In evaluating the District of Columbia statute, it is helpful to reexamine the second caveat of the Model Penal Code, that the general defense of necessity will not apply if a statute defines the offense and provides specific defenses. Under this caveat, the above statute may preclude use of a common law or statutory necessity defense. In cases in which the custodial parent is charged with a crime under the custodial interference statute, the defense surely would be excluded; defenses are specifically enumerated in the statute. Moreover, while the District of Columbia statute appears to provide for something akin to the necessity defense, the subjective element is missing. Under the language of the statute, a good faith, even reasonable, belief that the child would be abused would not be sufficient. The court would have to find that there was in fact an actual clear and present danger to the health, safety, or welfare of the child.[114] Custodial interference statutory defenses such as the one enacted in the District of Columbia, therefore, will not only hurt custodial parents with a reasonable belief but inability to prove abuse but may rule out the use of the general necessity defense for them as well.

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[108] *See supra* note 91 and accompanying text (discussing instances in which application of necessity defense was limited).

[109] *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-1302 (1977); N.Y. PENAL LAW § 135.45(1) (McKinney 1987); OR. REV. STAT. § 163.245(1) (1987); UTAH CODE ANN. § 76.5-303(1) (1982).

[110] D.C. CODE ANN. § 16-1022 (Supp. 1988).

[111] *Id.* § 16-1023.

[112] *Id.* § 16-1023(b)(1).

[113] *Id.* § 16-1023(c).

There are still two other possibilities for retaining the necessity defense in states that have enacted custodial interference statutes like that of the District of Columbia. Some of those states may not have adopted the caveat in the Model Penal Code regarding the existence of specific statutes. The District of Columbia has no statutory necessity defense and one could interpret the statute as providing *a* defense without precluding others, including the more general necessity defense. Secondly, not all custodial interference statutes set forth exceptions or defenses as does the District of Columbia statute. Thus, the above discussed caveat of the Model Penal Code is inapplicable in those states.

By contrast to the District of Columbia statute, a modified necessity defense was incorporated into the Florida custodial interference statute. After defining interference with custody, the Florida statute provides: "It is a defense that the defendant reasonably believes that his action was necessary to preserve the child . . . from danger to his welfare."[115] With a statute like that of Florida, it becomes even less important whether or not the state has adopted the provisions of the Model Penal Code. The statute itself allows protection for the custodial parent who reasonably believes abuse has occurred, whether or not abuse has actually occurred and is provable.[116]

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[114] *See id.* § 16-1023(b)(1).

[115] FLA. STAT. § 787.03(2)(a) (1981).

[116] *See id.* The Florida statute includes the word "reasonably" before the word "believed" in order to eliminate the possibility of an individual escaping criminal prosecution

Custodial parents who flee with their children, or who choose jail and secrete their children outside of the state, however, may not fare as well in Florida if a court order exists and the court order restricts the location of the child to the state of Florida. A separate Florida statute, which makes it a felony to remove children from the state contrary to court order, provides no equivalent necessity defense.[117] In fact, the statute enumerates no defenses. A custodial parent whose court order contains restrictive residence provisions cannot rely, therefore, on the specific statutory defense of the preceding section. As previously stated, however, given that this section lists no exceptions or defenses at all, the general necessity defense may still be available.

Once again, the Model Penal Code is instructive. The final caveat of the Code is that a legislative purpose to exclude the justification claimed must not plainly appear in the statute outlawing the substantive crime.[118] Clearly, states are free to limit the scope of the defense. The problem, however, is figuring out what "plainly appear" means. It is not clear if the presence of a necessity defense in Florida's custodial interference statute, and its absence in the following section regarding removing children from the state, is a "plain" appearance of legislative purpose to exclude the defense from the second statute.

To summarize, custodial interference statutes may or may not assist custodial parents who seek to raise the necessity defense in criminal proceedings. Where such statutes exist, the question of applicability of the defense will depend upon whether the state has adopted the Model Penal Code (or its equivalent) standard, whether other statutes specify defenses, and if so, whether the language of the statute incorporates a true necessity defense (good faith belief), a modified defense (reasonable belief), or requires the parent to prove actual harm.

VI. THE NECESSITY DEFENSE AND CONTEMPT

Necessity should be available as a defense to custodial parents charged with civil or criminal contempt. The precise test to be ap-

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because of any ill-advised or whimsical belief that her conduct was justified. *See id.* § 787.03 (1974 Committee Comment).

[117] *Id.* § 787.04(1).

[118] *See* MODEL PENAL CODE § 3.02(1)(c) (1985). Another restriction in the Code focuses upon the applicability of the defense. Recklessness or negligence on the part of the actor in bringing about the situation requiring the choice of evils may operate to bar the defense when recklessness or negligence is an element of the offense charged. *Id.* § 3.02(2). This restriction does not seem relevant here and therefore will not be discussed.

plied could be that of the Model Penal Code, in which a good faith belief that the conduct taken was necessary to prevent harm is sufficient,[119] or a more modified standard requiring that the belief also be a reasonable one.[120]

The application of the defense to criminal, as opposed to civil, contempt is a somewhat easier fit. The purpose of criminal contempt is punishment. The philosophy that created the defense in the criminal arena—that punishment is only for the culpable and that the law is willing to admit of certain circumstances under which the breaking of the law does not establish culpability—applies with equal force to the "crime" of contempt. Absent a total rejection of the necessity defense in criminal proceedings generally, there would appear to be no rational argument against its use by custodial parents who are held in criminal contempt.

As has been explained, however, courts often have discretion as to which type of contempt order they wish to impose.[121] Assuming that procedural safeguards attendant to a criminal contempt charge may sway courts to use civil contempt when they can,[122] or assuming that in some instances the discretion of the court may be constrained, the issue then becomes whether necessity ought to be a defense to a charge of civil contempt as well. The answer is yes. The preceding discussion of the difficulties of proving child sexual abuse in court and the problems created by the use of civil contempt cries out for some kind of reform.[123] In addition to the general notion that "something" has to be done, there are several reasons why the necessity defense is appropriate.

First, the necessity defense has never been restricted to the criminal side of the law; it enjoys a long history in the civil area as well.[124] The civil action, in which one party seeks a remedy from another, is akin to civil contempt, in which one party seeks to enforce her rights against another. If the civil law is willing to recognize, in appropriate cases, that necessity may protect a defendant from liability, it effectively fails to enforce another's right to recover for a wrong committed against her.[125] Thus, the law now recognizes necessity as a defense in civil, as well as criminal, matters, and does not restrict the defense to those situations in which the defendant attempts to avoid only punishment.

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[119] *See id.* § 3.02(1) (providing that conduct that actor subjectively believes to be necessary to avoid evil to himself or another is justifiable).

[120] *See supra* notes 115-16 and accompanying text (describing reasonable belief standard of Florida custodial interference statute).

[121] *See* R. GOLDFARB, *supra* note 42, at 50-52 (stating that although civil and criminal contempt were born from different histories and reasons they are considered but nuances of each other and are often applied interchangeably). In fact, a reviewing court often has difficulty determining whether a particular contempt order is civil or criminal. *See* Kutner, *Contempt Power: The Black Robe—A Proposal for Due Process*, 39 TENN. L. REV. 1, 8 (1971).

[122] *See* Note, *supra* note 40, at 106-07 (suggesting that civil and criminal contempt should be merged so that civil contemnor given "the protection to which he would otherwise be entitled were he guilty of irremedial misconduct").

[123] *See supra* notes 12-39 and accompanying text (describing difficulties of proving sexual abuse of children). A more radical possibility is that civil contempt in these kinds of custodial situations simply be abolished. This Article does not go so far, however. It assumes that civil contempt remains as an option for enforcement of custody and visitation orders.

[124] *See* The Case of the King's Prerogative in Saltpetre, 12 Co. Rep. 17, 77 Eng. Rep. 1294 (1607); Surocco v. Geary, 3 Cal. 69 (Cal. 1853).

Second, the issue of the actor's state of mind is not foreign to the law of civil contempt. As has been shown, the law ultimately affords respect and legal significance to an individual's belief when it releases her from incarceration upon a finding that further imprisonment will not coerce, it will only punish.[126] It does not seem incongruous for a legal system that is willing to allow a good faith belief to act as a key to the prison to allow that same belief to prevent the prison door from closing in the first instance.

Third, and perhaps the most cogent of all arguments, is Goldfarb's point that the labeling of contempt as "civil" or "criminal" is a legal fiction.[127] He argues that we must view civil contempt for what it is—a serious deprivation of liberty which ought to be afforded whatever procedural safeguards this legal system has instituted for those it seeks to incarcerate. In other words, civil contempt is in reality no different from criminal contempt in its aim, which is punishment through incarceration. Certainly a review of the contempt cases in any jurisdiction would lead one to believe that the courts have eroded the differences between the two, jailing persons for indefinite sentences in criminal contempt proceedings and for definite sentences in cases in which the stated reason is to coerce. If we view civil contempt through Goldfarb's prism, then, there is nothing really civil about it; it is really criminal in nature and therefore, ought be treated as such for all purposes, including the applicability of the necessity defense.[128]

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[125] Modern cases of civil employment discrimination rely on a form of the necessity defense. This "business necessity" defense requires that: (1) the employment or hiring practice is necessary to the safe and efficient operation of the business; (2) the practice carries out the alleged business purpose; and (3) no less discriminatory alternatives exist. *See* Robinson v. Lorillard Corp., 444 F.2d 791, 798 (4th Cir. 1971); *see also* Contreras v. Los Angeles, 656 F.2d 1267, 1280 (9th Cir. 1981) (explaining standards used to show business necessity defense); Shannon v. Pay 'N Save Corp., 104 Wash. 2d 722, 731, 709 P.2d 799, 806 (1985) (discussing business necessity defense).

[126] *See supra* notes 45-52 and accompanying text (discussing psychological element of civil contempt).

[127] R. GOLDFARB, *supra* note 42, at 48.

[128] *See id.* at 292-94 (suggesting that imprisonment in civil contempt situations is departure from Anglo-American law and is in fact often used for punitive purposes).

The District of Columbia Court of Appeals did in fact review, and reject, the necessity defense raised by Morgan in her civil contempt proceeding.[129] It admitted the applicability of the defense to criminal acts, including the proviso that proof of actual harm is not required; rather, a reasonable belief that harm was about to occur is sufficient. However, the court rejected the defense solely because Morgan sought to raise it in a *contempt* proceeding rather than as a defense to a *criminal* act.[130] The entire reasoning of the court on this point is as follows:

> In any event, the situation here is far different from that facing one who violates a criminal law. Here there was a specific court order, requiring specific conduct tailored to a specific fact situation—an order which we on appeal had refused to stay. Civil contempt could become meaningless if a lawful defense could rest on the ground that a party took a different view, however reasonable, of the potential harm in compliance.[131]

The court's reasoning is as dubious as it is sparse. First, there is nothing in the District of Columbia custodial interference statute that excludes persons having custody orders from its reach.[132] Thus, Morgan's actions could be construed as violating both the statutory law and the court order. In the former, it is clear that the appellate court would entertain the defense because it is specifically enunciated in the statute. In the latter, *whether civil or criminal contempt*, the court would refuse to do so. It is illogical to picture two simultaneous proceedings brought on by the same conduct, against the same person, consisting of the same evidence, and in the case of criminal contempt, with the same object—to punish the criminal/contemnor—and yet to have the court accept the defense in one but not the other proceeding. One is left to wonder, then, in what way the violation of a court order is "far different from that facing one who violates the criminal law."[133]

Second, it does not automatically follow that application of the defense is tantamount to rendering civil contempt meaningless. An individual contemnor seeking to assert the defense must still meet all of the elements. If the road to meaninglessness was as short as the court fears it to be, our criminal laws would have ceased to exist immediately upon the appearance of the necessity defense in our jurisprudence. The admission of an exception, or a defense, does not render the entire structure meaningless; it simply recognizes that in *some* instances, the general rule—that one must obey court orders—should not be applied.

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[129] Morgan v. Foretich, 546 A.2d 407, 411 (D.C. 1988), *cert. denied*, 109 S. Ct. 790 (1989).

[130] *Id.* The court explained that the necessity defense does not exonerate one who has the opportunity to resort to a reasonable legal alternative to violating the law. *Id.* (quoting Griffin v. United States, 447 A.2d 776, 778 (D.C. 1982), *cert. denied*, 461 U.S. 907 (1983)).

[131] *Id.* at 411.

[132] *See supra* notes 110-14 and accompanying text (providing text of District of Columbia custodial interference statute).

[133] *Morgan*, 546 A.2d at 411.

In addition, the same argument can be raised about the civil contempt doctrine that requires release of the contemnor upon a showing that further confinement will not persuade her to obey the order. As previously stated, this doctrine means that recalcitrance results in imprisonment, but *real* recalcitrance then results in release. The logic of such a doctrine would seem even harder for courts to accept than the necessity defense, and therein may lie an insight into the law's acceptance. It is not logic that fuels the doctrine, but the reality that for *some* individuals in *some* situations, the standard procedure—continued imprisonment—does not produce the desired result.[154] In those situations, the law is willing to recognize that the motivation of the contemnor is a relevant and important factor. The same is true of the necessity defense. *Some* individuals in *some* situations—like that of Morgan—will believe that they cannot act in accordance with the court order. The application of the necessity defense to a contemnor's situation provides a framework within which the court can then properly consider the contemnor's motivation for her failure to abide its terms.

Finally, if there is one clear difference expressed by the court in *Morgan* between the contemnor and the criminal, it is that the contemnor has violated an order that is specific to her, whereas the criminal has broken a law of more general application. It is not evident why the court regards this difference as dispositive. Perhaps the court sees the process by which a court order comes into existence as one in which the court has already considered the factors, including the personal feelings and motivations of the individual, that the contemnor now seeks to raise through the necessity defense. The legislative process, by contrast, does not tailor its product to any one individual's situation. While generally true, the specificity of the court order will apply to a situation that existed at the time the order was entered. The situation at the time the order was violated may be, and often is, quite different. Therefore, the specific tailoring may be for a reality that no longer exists, and which a new reality has now replaced.

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[154] *See supra* note 65 (citing cases in which court released persons when imprisonment lacked desired effect of coercion).

Even assuming, however, that the violation of the order followed on the heels of its entry, or more likely, of a court's refusal to modify an existing order, the court's reality is obviously different from that of the contemnor. The court's perspective, because it is determined by legal rules and procedures and the problems inherent in proving child sexual abuse, is a limited perspective. The reality of the contemnor, however, is not constrained by notions of what is legally admissible, or of whether or not a child stands up under cross-examination on the witness stand; the contemnor's perspective is built upon additional facts which the legal system has determined to be of no legal significance. Accordingly, when the *Morgan* court refers to a court order being tailored to a specific situation, it is a situation that the *court* has defined, not one as seen by the contemnor. One may wonder, then, why specificity, unfettered to the reality defined by the contemnor, should make a court order somehow more inviolate than a criminal statute. And if no more sanctity should attach to court orders than to criminal laws, the rationale for holding the necessity defense inapplicable in contempt proceedings crumbles.

VII. AFTER A SUCCESSFUL NECESSITY DEFENSE

The focus of this Article has been to argue on behalf of the availability of the necessity defense in civil contempt cases arising from child sexual abuse allegations. However, a fair question is what happens if the defense is successfully asserted. A potential contemnor may use the defense to avoid incarceration and all of the attendant harms of jailing a custodial parent, and yet the original problem remains. That is, what, if anything further, should courts do to deal with the problem that continues to haunt the custodial parent who, through a now judicially-sanctioned good faith belief of abuse by the other parent, refuses visitation rights.

Supervised visitation with the noncustodial parent is one solution that is often recommended, whether for an interim period or for the remainder of the child's minority. It may be a viable answer assuming that the custodial parent will agree to it, that the child has not in fact been abused, and that the noncustodial parent is willing to accept such limitations. On the other hand, it may be a solution that is unsatisfactory for all concerned. The custodial parent will not admit to any positive value to be had in a continued relationship between the abuser and the victim. The child, if in fact a victim, is forced into intolerable continued contact with his or her rapist. If the child is not, in fact a victim, there remains the intrusion of a third party into the time spent between parent and child, and perhaps for the noncustodial parent, the sense of stigma that follows. While it could be said that supervised visitation is a viable solution despite its problems, there remains the question of who will provide the supervision and who will pay for it.

A second possibility is that once the custodial parent has proven her good faith belief, the child could be removed from the custody of both parents and placed in foster care, with supervised access to both parents until such time as the question of abuse is decided. This option has the advantage of allowing the child to maintain contact with the parents while presumably ensuring his or her own safety.[155] It may also have the incidental advantage of testing out accusations of brainwashing of the child by the custodial parent. The resource problem is even greater here, however. The cost of supervision doubles, there being two parents to observe during visitation, in addition to the cost of the foster care itself. Assuming this to be an interim rather than permanent arrangement, there is also the cost of trained professionals to examine the child and the parents and to provide whatever counseling may be needed. Perhaps in even the most skilled of hands, the question of abuse may never be answered, raising the issue of whether long-term foster care is an acceptable resolution.

A third, and obvious, solution is to "fix" the legal system that makes allegations of child abuse so difficult to prove, and thus contributes to the problem of custodial parents whose shattered faith in the legal system causes them to hide their children or to flee with them. The tension between attempts to "fix it" and the constitutional rights of defendants[156] portend at best a slow, and at worst, an impossible process. Assuming that one could substantially improve the legal system without running afoul of the Constitution, there is no doubt that in some cases, custodial parents might persuade themselves that a court can and would decide the matter fairly. Unfortunately, the reformation of the legal system alone will not solve the problem. As previously discussed, failings in the society as a whole would remain. Pre-verbal children with no physical evidence of abuse, for example, will probably not stand any better chance in an improved legal system than in the present one.

The fourth alternative is for courts to recognize the limits of the law in resolving this conflict. Whether for lack of resources, or for other reasons, the legal system may have no answer that will satisfy the needs of all of the parties concerned. If this is the case, the court must seek to do the best it can, never forgetting that its focus should be on how best to promote the child's interests. Accordingly, the best in a myriad of less than optimal solutions may be for the court simply to allow the custodial parent to determine the extent of the relationship that will exist between the child and the noncustodial parent.

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[155] Placing the child in foster care is its own trauma, however. *See* Besharov, *supra* note 37, at 560 (describing some problems inherent in foster care system).

[156] *See supra* note 30 and accompanying text.

This suggestion does not minimize the effect on the noncustodial parent, for whom a court's refusal to interfere with the custodial parent's decision may mean a loss of contact with the child. Given the choices available, however, it can be defended for a variety of reasons. First, the child's best interest is served by allowing a continuation of the relationship between the child and the custodial parent, that is, the parent caring for the child on a daily basis. The interruption of such a bond, not to mention the actual physical displacement involved in placing a child in foster care, for example, is a source of great trauma to the child.[137] Secondly, to refuse to second-guess the custodial parent's decision in this matter underscores the court's initial determination regarding which parent would best serve the child's interests. The court (or sometimes the parties themselves) may have already made a decision that the child would be better off with one parent than the other, and that the custodial parent possesses all of the faculties necessary to act in the child's best interest. Therefore, in a difficult situation such as this, a court could stand behind its initial determination and place its faith in the custodial parent.[138] Third, such an idea is not entirely new. Though still controversial, and admittedly never really accepted in the American legal system, Goldstein, Freud, and Solnit, in *Beyond the Best Interest of the Child*, make a similar argument.

> Once it is determined who will be the custodial parent, it is that parent, not the court, who must decide under what conditions he or she wishes to raise the child. Thus, the noncustodial parent should have no legally enforceable right to visit the child, and the

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[137] J. Goldstein, A. Freud, & A. Solnit, Beyond the Best Interests of the Child 109 (2d ed. 1979). The importance of continuity of the relationship between the custodial caregiver and the child is beginning to be recognized in the doctrine of the primary caretaker. In custody determinations, this is a presumption that the child's welfare will best be served by placing her in the custody of the parent who has been primarily responsible for daily care of the child. Garska v. McCoy, 167 W. Va. 59, 278 S.E.2d 357 (1981) (originating presumption); *see* H. Clark, *supra* note 9, at 800. *But see* Loyola Association of Women Law Students, Seeking Solomon's Wisdom 5-6 (1984) (arguing that in spite of Goldstein's theory, many professionals in child welfare feel strongly that the more contact the child has with both parents the better the child will adjust to her new life).

[138] Under Japanese law, to be a custodial parent is to decide what, *if any*, contact the child will have with the noncustodial parent. *See* J. Goldstein, A. Freud, & A. Solnit, *supra* note 137, at 132.

> custodial parent should have the right to decide whether it is desirable for the child to have such a visit. What we have said is designed to protect the security of an ongoing relationship—that between the child and the noncustodial parent, which the adults involved have jeopardized. It leaves to them what only they can ultimately resolve.[139]

This view on the subject is different in one respect from the situation at issue here. Goldstein, Freud, and Solnit recommend that visitation be totally removed from the jurisdiction of the court except peripherally in that court's determination of who should be the custodial parent. This Article, however, does not go that far. The rights of the noncustodial parent are protected in some measure until it appears that further protection of those rights will harm the child. Thus, the noncustodial parent in most situations may continue to look to the courts for enforcement of his or her rights to visit with the child. Only in a situation of such irremediable conflict and one in which other alternatives prove harmful should the court choose the least detrimental one for the child, permitting the custodial parent to use her discretion to discontinue visits.

CONCLUSION

The problem of what courts should do with recalcitrant custodial parents is a problem with no easy solutions. The inquiry should not ignore that this is one small piece of the larger challenge facing the legal system, that is, what it can or ought to do in dealing with the hideous problem of sexual abuse of children. No ultimate solution exists, nor is one likely to. If nothing else, however, the legal system ought not be paralyzed by the enormity of the problem; rather, it should make whatever inroads are possible. It also ought not fool itself into thinking that solutions have no costs, or that balancing rights and interests of family members is a painless activity. The recognition of necessity as a defense to contempt charges is one small inroad. In a myriad of tough choices, courts need to be counted on to provide shelter and protection for child victims and to choose the course that is truly in the best interests of children.

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[139] *Id.* at 38.

Senator **Specter**. There is one quotation that I wish to quote from the comments by Assistant Professor Apel to note that they are not my comments. There is a description of Dr. Morgan who resisted the court order and has been incarcerated in the District of Columbia detention facility since August 28, 1987, as set forth in the Law Review article. This one paragraph puts the case in perspective and the issue in perspective.

"Elizabeth Morgan's case is not an isolated incident. Custodial parents, most of them mothers, have been faced with the Hobson's choice of defying court visitation orders to protect their children, thereby risking contempt charges, or heeding the court order and placing their children in danger of further sexual abuse by the noncustodial parent. Some, like Dr. Morgan, defy the court order and are incarcerated. Others defy the court order and flee with their children, thus avoiding contempt charges and the resulting imprisonment."

I would suggest, Mr. chairman and my colleagues, that there is a serious constitutional issue here, and I quite agree with what Senator Thurmond has said about the desirability of leaving State matters to the States. However, there is a real issue about the constitutionality of the trial judge incarcerating an individual for a contempt citation without a jury, without another judge, where the incarceration may last for a period of 13 years, which could be the case with Dr. Morgan.

Under the current order, this woman will be subject to imprisonment until the year 2000 for failure to comply with the court order. I have great reservations about the constitutionality of the judge who hears a case and gets deeply involved in a case and has an order defied. A question arises as to whether that judge is proper under our system to be able to impose summarily a term of imprisonment which can last for 13 years, contrasted with the right to jury trial or with the right to another judge who takes a different view because the judge's own order is not involved.

The question which starts with you, Senator, and I notice your interest in making a comment, is whether——

Senator **Hatch**. Would the Senator yield just before you ask the question?

Senator **Specter**. Yes.

Senator **Hatch**. I share the Senator's concern about Elizabeth Morgan. I have been worrying about that for a long time because it just does seem to be a harsh way to proceed. And I would like to see hearings held on this and see if there is some way we could resolve these conflicts. I have no right to pass judgment on who is right or wrong in that situation, but I certainly think it is not the way to proceed.

Apparently, she feels very, very deeply about what has happened and, if she is right, rightly so. If she is wrong, that remains to be seen. But I think something ought to be done. She should not just be rotting in jail down there. She is a very professional, competent individual from a professional standpoint and from all that I have heard, and I am very concerned about it.

I do not know what we can do up here because we hate to interfere with the judiciary, but I share the same concerns of the distinguished Senator from Pennsylvania. And I want to associate myself in part with his remarks.

Senator **Specter**. Well, I thank my colleague from Utah for those comments, and I would amplify one of his comments; that is, the difficulty of a Senate committee or the Senate or any legislative branch from getting involved in a pending court case. That is one which we all approach with enormous caution. It was only after Dr. Morgan was in custody for more than a year, or a very long period of time, that I raised the issue with the chairman and with the ranking member. But it is almost 2 years now, from August of 1987 to May of 1989, and the prospect of continued incarceration is present for a very protracted period of time.

We are addressing this issue in the context of the overall problem which you gentlemen have raised with your legislation, and also in the context of the constitutional issue about a right to jury trial and due process and being incarcerated in the context of this case. I think it is a most appropriate matter for us to raise, but I want to be explicit in not making any commentary on what the trial judge has done because he is operating as an independent judicial official, whom I respect, and we are in the context now of looking to the future as they may apply to many, many cases. But, necessarily, they could apply to Dr. Morgan as well; because if we enact legislation which will touch constitutional rights, it would apply to anybody whose constitutional rights are affected. The delicacy is really quite apparent, but I think that it is a matter beyond Dr. Morgan of widespread importance.

Senator Reid, what I would appreciate your reaction to are the two issues: the ones which your legislation raises as to the desirability of legislating in an area where there has been extensive judicial painstaking analysis on the issue of competency and the question of confrontation; and, second, as it relates to the interests you are trying to vindicate, the child's interest, where you have a case where the mother is incarcerated and where obviously the evidence is very difficult and it has been quoted as the judge finding it in equipoise, but because the burden not proved granting the father visitation rights, and then the mother's reaction and the incarceration. You have given this subject quite a bit of thought and I would be very interested in your response to both issues.

Senator **Reid**. Senator Specter, we all recognize, from having served with you, your analysis of the law. I would submit, however, in this instance that you raised a question regarding the presumption of competence with a child. That has been established, as you indicated, in the common law. However, on the Federal level, as I understand the Federal Rules of Criminal Procedure, there is a presumption of competence in the Federal rules—not in common law but in our Federal rules.

Also, using your same logic, with the civil contempt proceedings that have been in the courts from the time courts started, that has been something that has been protected, and rightfully so: the ability of a judge to hold one in civil contempt. And in the instance that we have here with Dr. Morgan, I do not know who is right and who is wrong. But I do suggest that in cases that occur like that, where I have had experience in my days of being a trial lawyer doing domestic relations work in an extensive nature, that it is a difficult decision a judge has. We will use Morgan as an example here even though I know nothing about the facts.

Let us assume, Senator Specter, that the husband, the father of the child, has done nothing wrong, never laid a finger on the child, but yet the mother of the child, in an effort to get even or whatever other term of art we want to use, says this man has abused this child. Now, the court, as I understand, has a right to hold a hearing to determine if, in fact, there has been abuse of that child. And under the pattern that we have set up in this law, it would be much easier for the judge to determine whether or not there had been any abuse of the child, sexually or otherwise.

So I think that they are not incompatible. I think that we have to recognize that in our society maybe it has always been there; maybe it is more prevalent now than it has been. But we do have a problem in our society with sexual and physical abuse of children. And we have to be able to approach it in a way that allows the child to survive the proceeding, but yet justice prevail.

And as I indicated in my opening statement, we have in the past said we do not want to damage the child any more, and so the child becomes a double victim. The child is abused, and he is victimized again by not being allowed to testify in court or in some manner to contribute toward the prosecution of the person who committed this crime.

So I do not think that they are incompatible. I think the *Dr. Morgan* case, while there is a precedent for contempt proceedings to incarcerate someone who does not follow a valid court order, I do not think that is in variance with what we are trying to do in this instance.

Senator SPECTER. Well, I appreciate your comments. A concern which I have—and I would appreciate your evaluation of it—is the limitless period of time a person may serve under a contempt order. I have never seen one for this length of time. In the Federal courts and also in the State courts, if you refuse to answer a question in the grand jury and you are held in contempt, you only stay in jail for the life of the grand jury, which is a maximum of 18 months.

Senator REID. Or in rare instances, a little longer, but not much.

Senator SPECTER. So here you have what is a sentence which would be longer than most murder cases, potentially. It may be that the power of the court has to be vindicated, but the question is whether there ought to be a jury passing on it or another judge passing on it, someone not embroiled in the specific facts, whose own authority is challenged.

Senator, have you ever seen a contempt citation of this duration?

Senator REID. No. I have to say, Senator, I earned a living for many years as a trial lawyer, and I have to be honest with you. I am surprised at someone being held for that period of time.

I think in regard to what Senator Thurmond has said time and time again—in this hearing already he said it two or three times, and he has made a career of it—this is an area we have to be very careful about because we really get into States rights in this area. I would be very interested in this committee looking into this, not this one particular case but contempt generally. Because if there is ever an area of unfettered discretion, it is in the judge's ability to issue contempt citations. And I think it would be in line for this committee to do some work in this area. I think it would certainly be warranted.

Senator SPECTER. Thank you very much, Senator Reid.

Congressman DeWine, would you care to comment? I will have no further questions.

Mr. DEWINE. Yes, just briefly, Senator.

I am sure that there is nothing more traumatic for a parent, whether it be a custodial parent or a noncustodial parent, than to be ordered by a court to turn that child over to another party when that parent honestly believes there is abuse going on or there is sexual child abuse going on. I am sure it is one of the toughest things in the world.

But, ultimately—and I do not quarrel with your comments about the length of the contempt—but, ultimately, I think it is a factual question. It is a question of fact in each case whether or not that trial court judge believes that abuse is occurring or not occurring.

I think our job, one of the things that we can do to facilitate that is what we tried to do in this bill, which is, as Senator Reid pointed out, make it easier for that child to testify, make it more likely that we will get the truth. And I think anything that makes it more likely that the child will testify will not be impeded from coming into court, will not be intimidated by coming into court, makes it more likely that we will ultimately get the truth.

But the final analysis, it seems to me, is that each one of these cases has to be a factual case, case by case by the trial court judge. I just do not know any other way around it. But they are tough. They are tough.

Senator SPECTER. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Grassley.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator GRASSLEY. Mr. Chairman, I do not have any questions of this panel. Obviously, they ought to be complimented for trying to find a solution to a very serious problem. As one myself who has been involved in legislation involving victimization of children, particularly sexual exploitation, I surely have sympathy for their cause.

I guess the concern I have is the extent to which I suppose I am going to have to have a reason for having Federal involvement in this area. That is paramount to me because I know a lot of States have been trying to address this problem. And, if we are going to impose a Federal solution, I would surely want to make sure that it is a proper one. I am not sure that has been proven yet at this point, but that is obviously the reason for the hearing.

So I ask that my statement be put in the record, and I compliment my colleagues.

The CHAIRMAN. Without objection, it will be placed in the record.

[The prepared statement of Senator Grassley follows:]

STATEMENT OF SENATOR CHARLES E. GRASSLEY

SENATE JUDICIARY COMMITTEE
HEARING ON VICTIMS AND CHILD ABUSE

MAY 16, 1989

MR. CHAIRMAN, I WANT TO THANK YOU FOR HOLDING THIS HEARING TODAY.

I KNOW THAT THE FOCUS OF TODAY'S HEARING IS CHILDREN WHO ARE VICTIMS OF CRIMINAL CONDUCT PERPETRATED AGAINST THEM, AND THEIR ABILITY TO REPORT AND TESTIFY AGAINST THOSE WHO ARE ACCUSED OF THAT CONDUCT.

WE ARE HERE TODAY TO DETERMINE WHAT PROPER ROLE SHOULD BE PLAYED BY THE FEDERAL GOVERNMENT TO ALLEVIATE SOME OF THE MORE ONEROUS CIRCUMSTANCES FACED BY MINORS WHO ARE THE VICTIMS OF CRIME IN OUR SOCIETY.

HOWEVER, WHILE I DO NOT WANT TO DIMINISH IN ANY WAY THE DAUNTING SITUATION IN WHICH CHILDREN WHO ARE THE VICITMS OF CRIME MAY FIND THEMSELVES, I FIRST WANT TO MAKE SOME GENERAL COMMENTS ABOUT VICITMS.

THE VICTIMS OF CRIMINAL CONDUCT HAVE BEEN A GREAT CONCERN OF MINE, ALL OF MY PUBLIC LIFE.

IN FACT, I BELIEVE THAT, IN THE LAST DECADES OF THE TWENTIETH CENTURY, THE SPECTER OF CRIME HAS MADE VICTIMS OF ALL AMERICANS.

AS INDIVIDUALS, CRIME AFFECTS THE WAY WE THINK, WHERE WE LIVE, WHERE WE GO, WHAT WE BUY, HOW WE RAISE OUR CHILDREN, AND THE QUALITY OF OUR LIVES AS WE AGE. AS A SOCIETY, WE HAVE ALTERED OUR COLLECTIVE BEHAVIOR BECAUSE OF CRIME.

CONSEQUENTLY, THESE BEHAVIOR PATTERNS SHOW THE PROFOUNDITY OF OUR STATUS AS VICTIMS OF CRIME.

VIOLENT CRIME CAN STRIKE WITHOUT WARNING -- AT ANY MOMENT, ANY PERSON CAN BE ATTACKED, CRIPPLED, ROBBED, OR KILLED.

BECAUSE OF THE THREAT FROM THE CRIMINAL, WE ARE ALL IMPOVERISHED; WE ARE ALL MORE FEARFUL; WE ARE ALL LESS SAFE; AND WE ARE ALL LESS FREE.

WHAT IS PROBABLY MORE STAGGERING IS THE FACT THAT AS MUCH AS FIFTY PERCENT OF THE VIOLENT CRIME IN AMERICA GOES UNREPORTED. AND UNFORTUNATELY, AN EVEN SMALLER PERCENTAGE OF THE CRIMES THAT ARE REPORTED EVER RESULT IN THE CONVICTED PARTY SERVING TIME.

THEREFORE, THE CRIMINAL KNOWS THAT HIS RISK OF PUNISHMENT IS SMALL, TO SAY THE LEAST.

WE EXPECT THAT CRIMINALS WILL BE PREVENTED FROM DOING US ANY HARM. HOWEVER, LAW ENFORCEMENT CANNOT ALWAYS BE THERE IN TIME.

CONSEQUENTLY, THE VICITMS THAT SURVIVE A VIOLENT ATTACK -- AND WHO ARE BRAVE ENOUGH TO REPORT IT -- EXPECT THE JUSTICE SYSTEM TO RESPECT AND PROTECT THEIR RIGHTS.

AFTER ALL, THEY ARE INNOCENT.

AND SINCE OUR JUSTICE SYSTEM DEPENDS UPON THE COOPERATION OF VICTIMS AND WITNESSES TO REPORT AND TESTIFY ABOUT CRIME, IT IS IMPOSSIBLE FOR A FREE SOCIETY TO HOLD CRIMINALS ACCOUNTABLE **WITHOUT** THAT COOPERATION.

I ALSO FIRMLY BELIEVE THAT **VICTIMS** -- OF WHATEVER RACE, CREED, COLOR, SEX, OR NATIONAL ORIGIN -- **HAVE RIGHTS THAT ARE EVERY BIT AS IMPORTANT - EVERY BIT AS LEGITIMATE - AND EVERY BIT AS VALID** -- AS THE RIGHTS AFFORDED TO ANYONE WHO IS ACCUSED OF COMMITTING A CRIME.

HOWEVER, VICTIMS OFTEN END UP FINDING THE TABLES TURNED UPON THEM, WITH THE JUSTICE SYSTEM'S LOGIC SEEMINGLY TURNED ON ITS HEAD BECAUSE OF THE GREAT IMBALANCE THAT OPERATES IN FAVOR OF AN ACCUSED DEFENDANT.

THOSE OF US WHO CARE ABOUT REAL JUSTICE, SHOULD WANT TO SEE A **BALANCE** RESTORED TO THE AMERICAN SYSTEM OF JUSTICE. VICTIMS OF CRIME ARE **NOT** SEEKING SPECIAL TREATMENT -- THEY **ARE** SEEKING BASIC **FAIRNESS**; **THEY ARE SEEKING RULES THAT WILL NOT BE** STACKED AGAINST THEM.

NEITHER VICTIMS -- NOR ACCUSED/DEFENDANTS -- SHOULD BE PLACED IN A POSITION THAT GIVES ONE A GREATER ADVANTAGE OVER THE OTHER.

THE JUSTICE SYSTEM SHOULD OPERATE TO ACHIEVE THIS SIMPLE TRUTH -- **TO BE FAIR AND TO PROTECT THOSE WHO OBEY THE LAW.**

THE JUSTICE SYSTEM SHOULD ALSO BE ABLE TO INSURE THAT DEFENDANTS ARE ABLE TO HAVE THEIR RIGHTS PROTECTED. HOWEVER, IF THEY ARE PROPERLY CONVICTED OF BREAKING THE LAW, IT SHOULD INSURE THAT THEY ARE ULTIMATELY PUNISHED.

THE JUSTICE SYSTEM IN AMERICA CANNOT AFFORD TO OPERATE IN THE SERVICE OF LAWYERS, JUDGES, AND DEFENDANTS, WHILE TREATING THE VICTIM WITH -- **AT BEST** -- DISINTEREST.

WE ALL ARE AWARE -- I HOPE -- THAT CHILDREN ARE ESPECIALLY AND PARTICULARLY VULNERABLE WHEN THEY ARE THE VICTIMS OF CRIME; AND AS A CONSEQUENCE OF THAT VICTIMIZATION, THEY ARE THRUST INTO THE SOMETIMES HOSTILE AND INTIMIDATING ENVIRONMENT OF THE JUSTICE SYSTEM.

MY OWN WORK IN THIS AREA LEAD ME TO PUSH FOR THE 1986 ENACTMENT OF THE CHILD ABUSE VICITMS' RIGHTS ACT, AS A PART OF PUBLIC LAW 99-591, THE FISCAL YEAR 1987 CONTINUING RESOLUTION.

AMONG THE PROVISIONS FROM THAT LEGISLATION THAT ARE NOW THE LAW OF THE LAND IS A FEDERAL CIVIL REMEDY THAT, FOR THE FIRST TIME, GIVES THE CHILD VICTIMS OF SEXUAL EXPLOITATION THE ABILITY TO SUE THEIR VICTIMIZERS IN FEDERAL COURT FOR DAMAGES, COURT COSTS, AND ATTORNEYS FEES. IN ADDITION, CRIMINAL PENALTIES FOR REPEAT OFFENDERS WERE INCREASED.

TODAY'S HEARING WILL HELP HIGHLIGHT THE HURDLES FACED BY CHILD VICTIMS OF CRIME. I WANT TO LISTEN WITH GREAT INTEREST TO HELP ME DETERMINE WHETHER THIS ISSUE -- WHICH HAS TRADITIONALLY BEEN LEFT TO THE STATES AND IN WHICH SOME DOZEN STATES HAVE TAKEN A LEADING ROLE -- IS ONE THAT REQUIRES A FEDERAL RESPONSE.

I LOOK FORWARD TO THE TESTIMONY FROM THE MEMBERS OF OUR PANELS AND THEIR OBSERVATIONS ON THIS ISSUE.

THANK YOU.

The **Chairman**. Let me make a point, and then I will let our colleagues who are testifying make their statement, and we will move on.

I am not sure there is some confusion here—oh, I beg your pardon. Senator Heflin, you did not have an opportunity to question, and I am sorry. The judge has arrived, and I apologize.

OPENING STATEMENT OF SENATOR HOWELL HEFLIN

Senator **Heflin**. Unfortunately, we have several hearings going on at the same time. I am not going to be able to stay the full time.

I do want to take this opportunity to recognize a fellow Alabamian, Mr. Robert E. "Bud" Cramer, who will be appearing as a witness before the committee. Mr. Cramer is the district attorney of Madison County, AL, which includes the city of Huntsville, and he is the founder and president of the National Children's Advocacy Center.

Bud is here to describe the program of the Center and how it has responded to the needs of sexually abused children and their families. He is to be commended for being the founder of this program, and I am sure that his testimony will be very helpful.

I have a much more lengthy statement, and I ask that it be put in the record.

The **Chairman**. Without objection, it will be put in the record. Thank you, Senator.

[The prepared statement of Senator Heflin follows:]

STATEMENT

SENATOR HOWELL HEFLIN

COMMITTEE ON THE JUDICIARY

HEARING ON CHILD ABUSE

MAY 16, 1989

MR. CHAIRMAN:

I WOULD LIKE TO WELCOME ALL THE WITNESSES HERE TODAY AND I WOULD LIKE TO TAKE THIS OPPORTUNITY TO RECOGNIZE A FELLOW ALABAMIAN, MR. ROBERT E. (BUD) CRAMER, JR., WHO WILL BE APPEARING AS A WITNESS BEFORE THE COMMITTEE.

MR. CRAMER IS THE DISTRICT ATTORNEY OF MADISON COUNTY, ALABAMA, WHICH INCLUDES THE CITY OF HUNTSVILLE. HE IS THE FOUNDER AND PRESIDENT OF THE NATIONAL CHILDREN'S ADVOCACY CENTER. BUD IS HERE TODAY TO DESCRIBE THE PROGRAM OF THIS CENTER AND HOW IT HAS RESPONDED TO THE NEEDS OF SEXUALLY ABUSED CHILDREN AND THEIR FAMILIES.

AS THE DISTRICT ATTORNEY IN HUNTSVILLE, BUD CRAMER DEALS DIRECTLY WITH THE ISSUE OF CHILD ABUSE. HE REALIZED THAT THE SYSTEM WAS NOT ADEQUATELY MEETING THE NEEDS OF THE VICTIMS AND, RESPONDING TO THAT PROBLEM, LAUNCHED A CHILD ABUSE TREATMENT PROGRAM, KNOWN AS THE NATIONAL CHILDREN'S ADVOCACY CENTER. LAW ENFORCEMENT AND CHILD PROTECTIVE SERVICES ARE HOUSED TOGETHER AT THE CENTER. AS A RESULT OF THIS PROGRAM, SEXUALLY ABUSED CHILDREN ARE NO LONGER SHUFFLED FROM AGENCY TO AGENCY. PARENTS ARE LESS LIKELY TO WITHDRAW THEIR CHILDREN FROM CASES, WHICH PREVIOUSLY HAD LED TO THE COLLAPSE OF LEGAL PROCEEDINGS.

BUD CRAMER IS TO BE COMMENDED FOR HIS DEDICATION AS THE FOUNDER OF THIS EXEMPLARY PROGRAM. THE NATIONAL CHILDREN'S ADVOCACY CENTER HAS BECOME THE MODEL FOR CHILD ADVOCACY CENTERS, NOT ONLY IN THE STATE OF ALABAMA, BUT ALSO THROUGHOUT THE NATION.

MR. CHAIRMAN, I COMMEND YOU FOR HOLDING A HEARING ON THE ISSUE OF CHILD ABUSE AND FOR THE IMPRESSIVE PANELS OF PROFESSIONALS WHO WILL TESTIFY TODAY. THE PROBLEMS OF CHILD ABUSE AND HOW WE ASSIST THE VICTIMS AND THEIR FAMILIES ARE ISSUES THAT MUST BE ADDRESSED. UNFORTUNATELY, THE NUMBER OF SEXUALLY ABUSED CHILDREN CONTINUES TO RISE. WE CANNOT IGNORE OUR OBLIGATION TO PROTECT THOSE WHO CANNOT PROTECT THEMSELVES.

Senator **Heflin**. I have similar views to Senator Specter pertaining to the common law development of competency of minor witnesses, and I think that has to be taken into account.

In some rare instances, it has been my experience as a lawyer of 25 years in which I tried many types of cases, including cases involving both prosecuting and defending them, and they are very difficult type cases. They are cases that have a lot of emotion to them. In some instances, there is the danger of either the mother or someone making some false charges. That does not occur very often, but it can occur. Then there are certain ages at which doctors testify there is—I have had them as witnesses—that there can be some question of some fantasy on the part. But I am sure those are very rare in regards to it because the overall problem of sexually abused children is widespread.

But those are matters I suppose you just have to leave to the trial and tribunal to be able to make determinations on it. And I commend you for your introduction of this bill and for your motivation here. Hopefully, we can come up with a reasoned approach.

The **Chairman**. Gentlemen, why don't I yield to you. You both want to say something and then I will conclude.

Senator **Reid**. What I wanted to say in closing, Mr. Chairman, is I don't want any confusion to develop. You know, this bill that we have introduced does not affect what the States do.

The **Chairman**. This suggests changing the Federal rules——

Senator **Reid**. That is right.

The **Chairman** [continuing]. And has no impact on the States.

Senator **Reid**. That is right, just serves as a model to what States can do and——

Senator **Grassley**. Let me interrupt. From that standpoint, though, a lot of States do follow and adopt, in some respects, Federal procedure.

Senator **Reid**. And that is what we want them to do. This is a model and we think that this sets a real good pattern——

Senator **Grassley**. Well, then, it is your intent to set a national pattern in this regard.

Senator **Reid**. That is right but, of course, that is up to the individual States.

The **Chairman**. Gentlemen, that is the point I was going to make, that we are not in any way impacting on States 'rights. We pass a lot of laws in the hope that States will adopt our views. Many times they do and many times they do not, and it is in their own judgment as to whether they think it is a good idea or bad idea.

So, although I would respectfully suggest there is not a States' rights question involved here, there is a serious question about changing the Federal rules in and of themselves. That is a serious concern that all of us have. That is why I am anxious to hear from you in much greater detail when you have an opportunity on the competency question.

One parting comment I would make, I would like to compliment you both not merely for your concern, but I believe that there is good news and bad news in the additional reporting. In the last 10 years, reported cases of child abuse were up, my recollection is, 212 percent or thereabouts, roughly 10, 12, 15 percent a year. I do not know the exact figure, but it is significant. While it is obviously tragic that so many children are being abused, but it is good that more people are coming forward and recognizing a problem that has always been there. Something good is happening because of what you do and the child advocacy groups that are out here, that mothers, grandmothers, grandfathers, and fathers feel that they can in fact come forward with their child and assist their child, and think that maybe there is a prospect for resolution.

I suspect that if your legislation meets your desired goals, the number of reported child abuse cases will increase even more. This is one of those things we truly want brought out of the closet, for there is no way to solve it unless it is out in the open.

So, although it is an awful circumstance for America to come face to face with the knowledge that this abuse exists, physical and sexual abuse. In this hearing we will be primarily focusing, as many have, on the sexually abused child. Although it is an awful realization, it is necessary to confront the problem in order to begin to solve it.

I assume that is what your legislation is all about, and so I do not think we should despair. I do not think there is any reason to believe that two generations ago there was less child abuse. I do not believe society has gotten worse. I believe that our grandmothers and grandfathers and great-grandmothers and great-grandfathers abused children as much as this society does, except that now we are willing to begin to take it on, and for that I compliment you.

I may be in the minority of one in that view, but the only way we ever solve a problem like this is bring it out in the open, for the American people to see it. Then they will rally around a means by which we can begin to deal with it.

I thank you both and I am sorry we went as long with you as we have. I guess I should have foregone my opening statement, but it was shorter than anything else we said. Thank you very, very much.

Senator REID. Thank you, Mr. Chairman.

The CHAIRMAN. Now, our next panel is a panel of very involved, dedicated citizens who have been willing, in many cases, to come a good distance.

Senator SPECTER. Senator Biden, may I just make one comment for the record.

The CHAIRMAN. Please do.

Senator SPECTER. I am obligated, I have a commitment to go to meet with the Secretary of Defense on the V-22, and I have to absent myself, but I will return to the hearings as soon as I come back.

The CHAIRMAN. Fine. Thank you very much.

Now, our first panel will be made up of Judge Charles B. Schudson, who is a Circuit Court Judge in Milwaukee, WI, who is widely recognized as a leading expert on laws protecting children in the courts. He is a coauthor of "On Trial: America's Courts and Their Treatment of Sexually Abused Children," and he is a frequent lecturer. We are indeed pleased to have you with us, Judge.

Judge Schudson. Thank you.

The CHAIRMAN. Dr. Muriel Sugarman is an instructor in psychiatry at Harvard Medical School, and a physician in child psychiatry at the Massachusetts General Hospital. She is currently conducting clinical research on children who are abused during visitations arranged as part of divorce arrangements. She has testified on procedures used by family courts where allegations of child sexual abuse are made in custody and visitation questions.

Doctor, are you here?

[No response.]

Remember, I told you before that staff is not always right? Apparently the plane has not landed. Whenever she arrives, we will make her part of the panel that is here, because I am very anxious to hear her testimony.

Denise Gooch is national board member of Mothers Against Raping Children. She is a parent whose daughter was the alleged victim of child sexual abuse and has experienced first-hand problem of both children and parents' experience in the court system.

And Patricia Toth is director of the National Center for Prosecution of Child Abuse, at the National District Attorneys Association. She has formerly prosecuted child abuse cases in the State of Washington.

We welcome you all and we are delighted to have you here. Although you may have longer statements, I would like to ask you to limit your opening statements to 5 minutes, so that we have an opportunity to get into a dialogue with you on a number of the issues that you may raise, and we should begin with the statements in the order that you were called.

Judge, if you would begin first.

A PANEL CONSISTING OF: HON. CHARLES B. SCHUDSON, WISCONSIN CIRCUIT COURT JUDGE, MILWAUKEE, WI; DENISE GOOCH, MOTHERS AGAINST RAPING CHILDREN, CLIFTON, NJ; MURIEL SUGARMAN, M.D., ASSISTANT IN PSYCHIATRY, MASSACHUSETTS GENERAL HOSPITAL, BOSTON, MA; AND PATRICIA A. TOTH, DIRECTOR, NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE, ON BEHALF OF THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION, ALEXANDRIA, VA

Judge SCHUDSON. Thank you, Senator Biden, ladies and gentlemen, thank you for the opportunity to discuss how child abuse victims are treated in America's courts and how we might respond with greater fairness.

Since 1982, I have served as a Wisconsin Circuit Court Judge in the Juvenile and Criminal Divisions in Milwaukee, presiding over hundreds of cases of child abuse, neglect and sexual assault. In addition, since 1983, as a faculty member for the National Council of Juvenile and Family Court Judges, and for the National judicial College, I have traveled to 30 States to teach judges and other professionals the laws and techniques that can assist children in courts. I have been equally impressed by two things: First, the profound lack of understanding of children, evidence law, and trial traditions; and, second, the sincere readiness to learn and change in order to provide justice for children.

The serious unfairness to children in America's courts derives not from malice, but from biases inherent in a system designed for adults and their legal purposes. Without intending to harm children, courts developed style, timing, and language suited to lawyers. Without intending to harm children, courts designed austere symbols and procedures to guarantee order. Thus, it is not surprising that many adult witnesses shake and stammer, even when testifying on the most mundane matters.

With that in mind, consider the child who must describe his or her most personal and horrifying experience. Surrounded by strangers, armed bailiffs, and a figure robed like Darth Vader; isolated on a witness stand and questioned in legalese, many children cannot testify. Then, even though they described their assault to parents or police, even though overwhelming evidence supported their claim, their voices will not be heard; their abusers will escape without treatment, supervision, or punishment.

With unprecedented numbers of child abuse cases coming to courts in recent years, we are seeing a constructive and determined effort to help children testify, and also to allow judges and juries to consider their reliable, out-of-court statements. Although justice in some cases may depend on technological innovations such as closed-circuit TV or videotape, justice in many more will depend on accurate interpretations of traditional evidence law, and on common-sense sensitivity to children.

Tragically, because many American courts possess neither legal acumen nor child sensitivity, they re-victimize children and their families. Most remarkable to those outside the court system, but sadly familiar to those within, is the fact that judges in juvenile, family, and criminal courts, usually have no experience or education related to child development and communication, and limited education in the most critical areas of law. The resulting insensitive procedures and unwise decisions not only harm children and families in each case, but further intimidate others who contemplate seeking justice for children in our courts.

Both the National Council and the National judicial College have recognized this tragic reality and designed excellent courses for judges. In fact, judicial educators have reached essential consensus on the most appropriate laws and techniques to assure fairness to both children and defendants. The good news, then, is that excellent training is available for judges. The bad news is that relatively few judges have gained the training they need to assure fairness. The bad news deepens when we realize that burgeoning case loads and penny-wise pound-foolish policies assure ever-increasing injustices for children.

In the materials I have submitted for the committee are detailed discussions of specific legal problems. There you will find the *amicus* brief I prepared for the Supreme Court in *Coy* v. *Iowa*. Given that there has already been some discussion there, let me just briefly depart from my opening remarks to comment that shortly after the decision, Michigan University Law Professor of Yale Commissar commented that he believed not the plurality opinion of Scalia, but the concurring opinion of O'Connor would become the law of the land. Indeed, that has come to pass.

Since the Supreme Court decided *Coy* v. *Iowa,* one appellate court in Maryland and four State Supreme Courts have decided *Coy*-like cases, five out of five have adopted the view of Justice O'Connor, five out of five have said that, consistent with the sixth amendment confrontation clause is the opportunity for a child to testify through closed-circuit or behind one-way screens when the judge finds that that is necessary to assure fairness.

The CHAIRMAN. Judge, if I can stop you on that point, I don't disagree with that, but it is not appropriate, is it, to say that it is the law of the land now, just because you have five appellate courts agreeing. Obviously, one of those cases is going to go to the Supreme Court, it will not become the law of the law until the Supreme Court makes that judgment, will it?

Judge SCHUDSON. In part, that is so. When there is a four Justice plurality, that always leaves some in doubt, and then it is debatable. Figuratively, rather than literally, it seems that the O'Connor opinion has become the adopted law.

In the appendix in this brief, you will also read how children were silenced until given the chance to testify through videotape, or with dolls, or while sitting on a lap; how child rapists would have gone free despite overwhelming evidence, but for the techniques that responded to the special rhythms of children.

I have studied S. 533. While its intentions are good, some of its provisions would prove counterproductive. I would be prepared to identify its shortcomings and recommend specific modifications, if you desire.

Since you have raised an important question already, again let me depart briefly to say that I agree with what I draw as the inference from your question, in my estimation, in the provision on competency, at page 5, there is a very serious step backward if we do not do what you suggested might be possible. And as I looked through the bill and attempted my own editing, I cut everything after that second line, "However, a child is presumed to be competent."

In 1974, the Federal Rules of evidence were revised and there quite properly, those who considered those laws found the absurdity of the competency restriction for children. They did not modify it, they virtually abolished it. Since 1974, about half of our States have followed suit, quite properly. The elaboration at page 5 would take us a step back to the perversion of the criteria enunciated in *United States* v. *Wheeler,* by the Supreme Court in 1895. We do not want to see a return to the perversion of the *Wheeler* criteria.

The CHAIRMAN. Judge, when the Federal Rules were amended, I believe in 1974, did the amendment strike any reference to competency or did it affirmatively state a child is presumed?

Judge SCHUDSON. That I do not recall, and I am here without my staff, but perhaps that can be answered in the balance.

The CHAIRMAN. Well, my staff is here and I assure you will have the answer before this hearing is over. Right? Go find out. [Laughter.]

Judge SCHUDSON. Senator, in "On Trial: America's Courts and Their Treatment of Sexually Abused Children," Dr. Dziech and I have attempted to address the very questions before you, and with deference to Senator Thurmond's concern about frugality, each member of the committee has already been provided with a copy of this book.

In our estimation, you are confronting an issue that is as difficult and important as any facing our Nation. Its awesome implications have only recently been understood as we finally acknowledge the staggering numbers of abused children in America, and their impact on the health and safety of our country.

Have courts responded with adequate skill and sensitivity? No, they have not. Can they? The jury is still out. As we conclude in "On Trial": "Whether one views the court system with faith and optimism or with disdain, anger and despair, it is—for now—society's only system for supervising and restraining those who endanger children. The task it faces is formidable. Regarded by so many Americans as a symbol of trust betrayed, the . . . court system must restore public faith in its will and its ability to respond to the cries of . . . abused children."

Thank you.

[The prepared statement of Judge Schudson follows:]

United States Senate
Committee on the Judiciary
May 16, 1989

Testimony of Judge Charles B. Schudson

Senator Biden, ladies and gentlemen, thank you for the opportunity to discuss how child abuse victims are treated in America's courts, and how we might respond with greater fairness.

Since 1982 I have served as a Wisconsin Circuit Court Judge in the juvenile and criminal divisions in Milwaukee, presiding over hundreds of cases of child abuse, neglect, and sexual assault. In addition, since 1983, as a faculty member for the National Council of Juvenile and Family Court Judges, and for the National Judicial College, I have traveled to thirty states to teach judges and other professionals the laws and techniques that can assist children in courts. I have been equally impressed by two things: 1) the profound lack of understanding of children, evidence law, and trial traditions; and 2) the sincere readiness to learn and change in order to provide justice for children.

The serious unfairness to children in America's courts derives not from malice, but from biases inherent in a system designed for adults and their legal purposes. Without intending to harm children, courts developed style, timing, and language suited to lawyers. Without intending to harm children, courts designed austere symbols and procedures to guarantee order. Thus, it is not surprising that many adult witnesses shake and stammer, even when testifying on the most mundane matters.

With that in mind, consider the child who must describe his or her most personal and horrifying experience. Surrounded by strangers, armed bailiffs, and a figure robed like Darth Vader; isolated on a witness stand and questioned in legalese, many children cannot testify. Then, even though they described their assault to parents or police, even though overwhelming evidence supported their claim, their voices will not be heard; their abusers will escape without treatment, supervision, or punishment.

With unprecedented numbers of child abuse cases coming to courts in recent years, we are seeing a constructive and determined effort to help children testify, and also to allow judges and juries to consider their reliable, out-of-court statements. Although justice in some cases may depend on technological innovations such as closed-circuit TV or videotape, justice in many more will depend on accurate interpretation of traditional evidence law, and on common-sense sensitivity to children.

Tragically, because many American courts possess neither legal acumen nor child sensitivity, they re-victimize children and their families. Most remarkable to those outside the court system, but sadly familiar to those within, is the fact that judges in juvenile, family, and criminal courts, usually have no experience or education related to child development and communication, and limited education in the most critical areas of law. The resulting insensitive procedures and unwise decisions not only harm children and families in each case, but further intimidate others who contemplate seeking justice for children in our courts.

Both the National Council and the National Judicial College have recognized this tragic reality and designed excellent courses for judges. In fact, judicial educators have reached essential consensus on the most appropriate laws and techniques to assure fairness to both children and defendants. The good news, then, is that excellent training is available for judges. The bad news is that relatively few judges have gained the training they need to assure fairness. The bad news deepens when we realize that burgeoning case loads and penny-wise pound-foolish policies assure ever-increasing injustice for children.

In the materials I have submitted for the Committee are detailed discussions of specific legal problems. There you will find the Amicus brief I prepared for the Supreme Court in a child sexual abuse case decided last year. In the appendix you will read how children were silent until given the chance to testify through videotape, or with dolls, or while sitting on a lap; how child rapists would have gone free despite overwhelming evidence, but for the techniques that responded to the special rhythms of children.

I have studied S. 533. While its intentions are good, some of its provisions would prove counterproductive. I would be prepared to identify its shortcomings and recommend specific modifications, if you desire.

In On Trial: America's Courts and Their Treatment of Sexually Abused Children (Beacon Press: 1989), Dr. Dziech and I have attempted to address the questions before you. In our estimation, you are confronting an issue that is as difficult and important as any facing our nation. Its awesome implications have only recently been understood as we finally acknowledge the staggering numbers of abused children in America, and their impact on the health and safety of our country. Have courts responded with adequate skill and sensitivity? No. Can they? The jury is still out. As we conclude in On Trial:

> Whether one views the...court system with faith and optimism or with disdain, anger, and despair, it is--for now--society's only system for supervising and restraining those who endanger children. The task it faces is formidable. Regarded by so many Americans as a symbol of trust betrayed, the...court system must restore public faith in its will and its ability to respond to the cries of...abused children.

Judge Charles B. Schudson
Wisconsin Circuit Court
Branch I - Milwaukee County
Milwaukee County Courthouse
901 North Ninth Street
Milwaukee, Wisconsin 53233
414-278-4482
May 16, 1989

The CHAIRMAN. Thank you.

Before we go to you, Ms. Gooch, let me say two things: One, I understand that some of you are neither professional witnesses, and this forum is not all that different than what some people may walk into a court. The only difference is you have got on occasion up to 14 of us sitting up here peering down. I want to thank you for coming, you and the other witnesses who may not have appeared before a Senate committee. If we had our way, we would lower the table and change the forum, because we are really here to hear what is on your mind and what you think.

One other: As I understand, Ms. Gooch, you are under court order not to discuss your case.

Ms. GOOCH. To the media or activist groups.

The CHAIRMAN. Well, and to me. Do not get into your case. I do not want that to happen here. That relates to the *Morgan* case as well—it is true that Senator Specter asked me to have Dr. Morgan here. That is an on-going case and, although I admit I may err on the side of making sure that this committee does not interfere with a separate branch of government's proceedings, it is the way I will continue to err.

I might add, by the way, for the record that there is already in the Federal Rules—this does not solve the problem of the *Morgan* case that was referred to earlier—at 28 U.S. Code, section 1826, subparagraph 2, a prohibition against keeping someone in jail, which confuses me a bit here, beyond an 18-month period in a Federal civil contempt proceeding.

There is a restriction in the Federal law now, but I am not quite sure how, with all my friends who voiced their States' rights concerns, how we would in fact change the State law by insisting that it reflect a similar view. In Federal law, no judge has the ability to keep someone in jail for a contempt citation in a civil proceeding for more than 18 months.

So it is going to be very important that we do not get into cases that are still pending. That is particularly true for your case, where there is a court order, because I do not want to share the same cell with you, I do not want to be part of it. [Laughter.]

That did not come out quite the way I meant it. Let me also say that I think we should be very careful of our role and responsibility here, in order to be able to do as much as we can to protect our children.

We have been so lax in dealing with our children. We think of it always in terms of other people's children. They are our children, all our children. We do not pay enough attention to that.

So, having said all that and admonished you as best I can, please attempt to not speak to your case. All right?

Ms. GOOCH. Thank you.

The CHAIRMAN. Now, welcome.

STATEMENT OF MS. DENISE GOOCH

Ms. GOOCH. Welcome to you, too. Good morning, Mr. Chairman and honorable members of the committee. Thank you for asking me to testify here today.

I believe the issue of child abuse victims in our system is of the utmost importance. Within the written testimony, there is a variety of cases that were presented to you, and these are only a tiny fraction of the cases that we hear daily in MARC.

The first and foremost issue I am going to address is not my own case, however, because there are certainly many, many like it across the United States.

The CHAIRMAN. I mean in no way to denigrate your case.

Ms. GOOCH. No, no, no problem.

What the problem, however, is——

The CHAIRMAN. Is a court order.

Ms. GOOCH. No, no, it is the problem of secrecy in these cases. First and foremost, one of the reasons that child victims are mistreated in our judicial system is the gagging, sealing and closing of court records and testimony. Social Services and our courts refuse to allow the public to know of the atrocities committed on children, in order to avoid accountability.

I would like to interject especially that at the present time in the present ruling with Brian Deshanie, where this may render less accountability to Social Security, because at this point, unless the child is in the custody of the State, now no one is accountable. Gag orders are made supposedly to protect the child. In no way, shape or form do they do so.

Abuse is not only reported and ignored in situations of divorce, but also in foster care situations and, accordingly, confidentiality rules seemingly protect the social service agency and the judicial system, but not in fact the child.

We have recently had a case in new Jersey where a 5-year-old was killed, and the minute someone attempted to address the issue and to speak about what was found, there were gag orders placed upon that person.

We often hear that child abuse allegations are false, because they arrive in divorce cases. However, the recent study done by the American Bar Association in conjunction with the National Legal Research Center for Child Advocacy and Protection and the Association of Family in Conciliatory Courts, states that these are a rarity and that 95 percent of these cases are not unfounded allegations.

In our organization, the calls of these cases across the country are on the increase. Most of them are in fact mothers attempting to protect their children. However, there are fathers also. People are not able to pay at this point the fees incurred in litigating in these cases and in getting the expert testimony and, as a result, more often than not, the alleged abuser is grossly manipulating and using our present court system, and that must be put to a stop in some way or form.

Children are often in these cases, the social service system's are not adequately investigating them and not adequately and properly investigating them prior to their being litigated as custody matters. This is one of the other problems that is incurred here.

Many times, we have encountered—and I am not going straight from my testimony, so pardon me, I am interjecting things——

The CHAIRMAN. You are doing fine.

Ms. Gooch. OK. Children in many cases are treated like hostages. We have a case in Massachusetts where the child has repeatedly stated her father abused her, there is medical evidence in the case, there is psychological evidence in the case, the child has been incarcerated in foster care as long as Elizabeth Morgan has been in jail. That child cannot even have uncensored letters written to her mother. That child is 10 years old and she knows who abused her.

The way we are treating our children is that when we are telling them to tell, we are teaching them on TV, in everything we are seeing, tell if you have been abused. When they do tell in these cases, the children are put through a series of interviews and possibly put in foster homes and possibly removed from the only protective parent they know, until they can potentially recant. They are treated somewhat like the hostages that we have in Iran, who on TV look very happy until we hear about their death in the newspaper.

Most disbelief of child sexual abuse claims is the result of the wish not to believe. When social service departments do not want to believe these cases or when a judge does not want to hear about abuse, the result is commonly called "no evidence," or it is unfounded. A child can keep saying she was abused, but maybe it is not true, maybe it is a vindictive effort on the part of a parent.

However, I state before this committee that no parent will go to jail, become bankrupt, run from the law or do anything as insane as that without having an extremely good reason to do so. In most of these cases that are occurring, there is medical and physical proof offered to the court, and many times the court refuses to address those proofs. There are psychologists—and I will state that in one of the cases in Washington, we have over 11 to 13 experts in the field of child sexual abuse who state the child was abused. The child states she was abused. The judge states she was not. The judge is making a medical diagnosis, and there has to be intervention in these cases.

I suggest to this committee that there can be an executive meeting whereby the testimony of these "records" which are sealed can be brought forth, is becoming a public embarrassment to the United States of America, the way the current system is treating children and protective parents, is definitely showing that right now we are lacking human rights.

I would like to illustrate with one specific case which has great ramifications, because that case was recently one of the first to be properly adjudicated, and it just so happens that it began in the very same county where *Elizabeth Morgan's* case has remained improperly adjudicated. I will call it North and South.

In the North, the children were examined because an allegation of abuse was made. The North Department of Social Services founded the case, but the supervisor mysteriously unfounded it. This happened twice, giving the impression that two false allegations were made. The children were threatened by the abuser on a visit, if they dared tell again, they would die. They returned to the South but their school performance continued to be poor, so the South State investigated and told the mother that unless she reported the abuse and cooperated with the investigation, she would be charged with neglect. She was ordered not to allow any more visits until the problems were cleared up, but she was afraid of the judge in the North. He held her in contempt and ordered her to produce the children or to go to jail.

Meanwhile, the South founded a definite case of sexual abuse. The court in the North asserted its jurisdiction and the court in the South had to take legal custody of the children away from the mother to protect them, but they left her with physical custody.

The court in the North then allowed an investigation by its own Department of Social Services, and at this time, under the auspices of the guardian as litem from the South, the North's department made and did make a founded report of sexual abuse. This time, the prosecutor in the North drew a warrant and the guardian ad litem in the South prepared the children to testify. By then, the alleged abuser had taken a polygraph test and the charges were dropped.

The failure of the system so far on three levels, prosecutorally by the social service departments. The North did not want to listen to the findings of the Department of Social Services and again ordered the children into visitation, refusing to listen to testimony from the South. However, the North court made a tactical error in this developing atrocity, it failed to gag, close and seal the case in time. Someone notified the media and they showed up at the trial. That day, the judge ordered the gag, seal and closure, but one reporter had the story on the front page of the paper. It read, "Judge Orders Visitation in Abuse Case."

Because of the media, the judge relinquished jurisdiction, the case was then tried for 3 weeks in the SOuth and the evidence was allowed in. The judge rendered a detailed written opinion of 173 findings of fact. One of these findings was that there had been clear and convincing evidence of child sexual abuse and mental abuse, while the judge in the North was still ordering unsupervised visitation. That is the very same jurisdiction where *Elizabeth Morgan's* case began.

The judge in the North was notorious for refusing to allow anything into the court. Silence is protecting none of these children today.

The CHAIRMAN. Ms. Gooch, I see that you have a number of pages there and you are not about to finish. You have already gone about 10 minutes, so please try to summarize, if you would.

Ms. GOOCH. OK. What I would like to do at this point is address suggestions. First of all, I do feel we do need executive hearings and more hearings on this issue so that all may fully understand it. Second, I think it would be very important to immediately fund and establish a remedial task force to examine, correct, and report on the cases of court-sanctioned child abuse now pending and threatened in several States; legislative guidelines which address the void created by the *Deshanie* decision, or in other words to provide Federal legislation mandating accountability by the departments of social services of the several States so long as they receive Federal moneys; enforce constitutional rights in child abuse proceedings, including first amendment rights to freedom of expression, including public trials with name changes to protect the innocent where necessary; 14th amendment rights to equal protection and due process for children so that the children may neither be deprived of their liberty interest without due process. And we need to begin addressing the problem of preventing judges from making medical diagnoses in many of these cases.

I will not go any farther because I do have a lot more pages left, and I am sorry for taking so much time.

[The prepared statement of Ms. Gooch follows:]

Mr. Chairman, Honorable members of the Committee, thank you for asking me to testify at this hearing. I believe the issue of treatment of child abuse victims in our system is of the utmost importance. Within the written tes-timony you will find 12 cases, representing a tiny fraction of the problems children are facing in our courts, in our social service agencies, in our police departments. The system has now failed at all levels to protect our young.

The circumstances which led me to become involved as an advocate for child victims are my own personal experiences. However, I was not a child victim. I am not free to speak about my story, because of a gag order from the Superior Court of Elizabeth, New Jersey.

First and foremost, one of the reasons child victims are mistreated in our judicial system is the gagging, sealing and closing of court records and testimony. Social Services and our courts refuse to allow the public to know of atrocities committed on children, in order to avoid accountability. Gag orders are made supposedly to protect the child. In no way, shape or form do they protect anyone other than the abusers and the system.

Abuse is not only reported and ignored in situations of divorce. In New Jersey, a foster parent recently reported abuse of a child in her care--she reported the child's disclosures and behavior, which included self-destructive behavior. These allegations received inadequate attention. As a result, a 5-year old child is dead. Secrecy did not protect that child--it protected Social Services and now nobody is held accountable for the death.

In the state of New York recently there was a most outrageous event, the brutal death of Lisa Steinberg, at the hands of her Joel Steinberg. Curiously, Social Services in New York had investigated allegations of abuse three times before, finding "no evidence." We in MARC see and hear about these cases every day. Most of the cases in the written material are regarded as custody matters, when in fact they have been turned into custody battles by manipulative abusers who use the court system to their advantage. Nobody wants to be seen as a child molester, so they choose to be seen as wronged parents battling for custody of their children. In fact, these cases presented to Your Honors are not custody matters, but crimes against children, sanctioned and in some cases, ordered by our court system.

We often hear that child abuse allegations are false, because they arise in divorce cases. It should come as no surprise that often, first-time allegations of child sexual abuse do occur upon separation or divorce. Children living under the same roof with their abusers will not tell. Nor would adults disclose abuse if they were in the control of their abusers--like hostages. Hostages may state in front of video cameras that they are being treated well--until we read of their death. It should come as no surprise either, that the disclosures of children, like those of battered women, are recanted if the child is returned to the abuser. This is why current procedures in social service investigations are ineffective. If children visit their abusers, they recant. There is rarely substantive medical evidence in preschool children. Sometimes the scars of abuse are only psychological. And even when there is medical evidence, courts and social service agencies may dismiss it as "self-inflicted" or "equivocal." We often hear that a child can scar her hymen with objects she playfully inserts. THIS IS A MYTH! No child inserts objects into her vagina hard enough to scar herself, unless she is already mentally disturbed because she has been abused.

Most disbelief of child sexual abuse claims is the result of the wish not to believe. When a social services department doesn't want to believe cases of abuse, when a judge doesn't want to hear about abuse, the result is commonly known as "no evidence." A child may say she was abused--but maybe it's not true. Another child may have witnessed it--but maybe he was brainwashed. There may be medical evidence--but maybe it was self-inflicted. Etc. Etc.

Moreover, judges in these cases often act as medical doctors or experts. One judge declared that psychiatrists read tarot cards and tea leaves--is he qualified to judge a case dependent upon psychiatric testimony? Another declared the evidence "in equipoise," whether or not there had been sexual abuse, so the child was ordered into unsupervised visitation with the alleged abuser--with a 50 percent chance of rape. One judge called a girl "provocative" at 9 years old, because her father had sexually abused her. Is that judge qualified to decide a child abuse case?

I would like to illustrate with one specific case, but it is very much like most of the cases brought into court. It illustrates the failure of social services, the police, the prosecutor, the judicial system, to protect the children. This happened for five years until jurisdiction was transferred. Since two jurisdictions were involved I will refer to them as North and South.

In the North the children were examined because an allegation of abuse was made. The North Department of Social Services founded the case, but the supervisor mysteriously unfounded it. This happened twice, giving the impression that two false allegations were made. The children were threatened by the abuser on a visit; if they dared tell again, they would die. They returned to the South but their school performance and health were poor. A social worker in the South suspected they were being abused on visits.

That department investigated, and told their mother that unless she reported abuse and cooperated with the investigation, she would be charged with neglect. She was ordered not to allow more visits until the problems were cleared up. But she was afraid of the judge in the North; he held her in contempt and ordered her to produce the children or go to jail. Meanwhile, the South founded a definite case of child sexual abuse.

The court in the North asserted its jurisdiction. The court in the South took legal custody of the children away from the mother to protect them, leaving them in their home but maintaining control of the situation. The Court in the North then allowed an investigation by its own department of social services, and this time, under the auspices of the guardian ad litem from the South, the North's department made, and did not *un*make, its founded report. T[illegible] time, the prosecutor in the North drew a warrant and the guardian ad litem in the South prepared the children to testify. But then the alleged abuser took a polygraph test, and the charges were dropped.

The North Court did not want to listen to the findings of the department of social services, and again ordered the children into visitation, refusing to listen to testimony from the South. However, the North court made a tactical error in this developing atrocity: it failed to gag, close and seal the file in time. Someone notified the media, and they showed up at a trial. That day the judge ordered the gag, seal and closure. But one reporter had the story on the front page the next day. The headline read, "JUDGE ORDERS VISITATION IN ABUSE CASE."

Because of the media, the judge relinquished jurisdiction. The case was then tried for three weeks in the south, and all the evidence was allowed in. The judge rendered a detailed written opinion with 173 findings of fact. One of these findings was that there had been *clear and convincing evidence of child abuse*--while the judge in the North was still ordering unsupervised visitation.

The Judge in the North was notorious for refusing to listen to evidence of child sexual abuse. The only reason this case worked out for the children because the gag order was not imposed until after a journalist let the American public know what was happening. Most Americans can tell the difference between right and wrong and most Americans know child abuse is wrong. But most Americans do not know what is going on behind closed courtroom doors, in confidential social service agencies, in prosecutors' offices, police departments, or in the homes of child abusers. The excuse for secrecy is the "protection of the innocent." Secrecy has never protected the innocent. It has protected the guilty.

SILENCE IS NOT PROTECTING MY CHILD TODAY!

Obviously, the entire system cannot be reworked immediately. However I believe it is essential to have executive hearings, so that someone can listen to what is really going on in our courts. We need to speak out, free of gag orders, so more children can be freed of the ravages of abuse. We cannot tell you what is happening while we are ordered not to speak. Let me speak to you again, before a Committee that ungags me. I need my First Amendment rights back. The children need their Fourteenth Amendment rights back.

History repeats itself. During the Holocaust nobody wanted to believe the victims. Now, Holocaust survivors of that era are the experts--but 12 million are dead. How many of our children will be survivors of abuse, to testify 50 years from now? The children and the protecting parents in these situations are the real experts. We need to ungag them, listen to them, not to distort their words, punish them for speaking, discard their evidence, ignore their facts.

Please act quickly. Justice itself is on trial in America.

The CHAIRMAN. No, I understand your concern, and we will have all your statements entered in the record as if read. We will get an opportunity maybe to answer some questions.

STATEMENT OF MS. PATRICIA A. TOTH

Ms. TOTH. Thank you.

Good morning, Mr. Chairman. My name is Patricia Toth. I am the director of the National Center for Prosecution of Child Abuse. I am testifying today on behalf of our center and its affiliate, the National District Attorneys Association.

The CHAIRMAN. Are you a prosecutor yourself?

Ms. TOTH. I was a prosecutor, yes. I started in 1980 in the State of Washington and was a prosecutor until 2½ years ago, when I came here to work for the center.

The CHAIRMAN. Thank you.

Ms. TOTH. During my time as a prosecutor, I handled hundreds of child abuse cases and ended up taking many of them to trial, even with very young victims. So I speak to you from that perspective as well.

The National District Attorneys Association also does represent all prosecutors across the country. Over 6,500 members belong to NDAA.

It is an honor to be before the committee, Mr. Chairman. This is an extremely crucial issue. Ten years ago, if we had held a hearing on the problems of child abuse victims in the courts, there would not have been much to say because very few children ever appeared to testify in our courts. But growing numbers of cases have highlighted the critical need for us to do more and the need for greater involvement of the judicial system.

There is a lot of good news in the last 10 years, as you alluded to. We have learned a lot, and the experience of prosecutors in particular, I think, symbolizes the positive changes that have been made and can continue to be built on. Prosecutors have taken a lead across the country. They have promoted new legislation; they have organized interdisciplinary teams, provided training, created special units within their offices, and advocated for court changes, and, through NDAA, created our National Center to provide them with the kind of support that they needed. We are fortunate to have the support of the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice as well.

Child abuse is now viewed by most district attorneys in this country as one of their most important responsibilities, a far cry from 10 years ago. And we now know much more than we did 10 years ago about how to handle these cases.

For example, we know how to train prosecutors to do a better job. The challenge that remains is to make that training available to all the prosecutors who need it and all the other professionals who need it.

Through the center, prosecutors have collaborated to produce this comprehensive manual, "Investigation and Prosecution of Child Abuse," a copy of which has been provided to the committee, which shows that we no longer are in the situation we were 10 years ago where we just did not know what to do with these cases.

The approaches have been many. In my own home city of Seattle, WA, it was not the county I practiced in, but King County prosecutor Norm Maleng created this special unit in his office nearly 10 years ago to handle these cases. That was the result of LEAA funding from the Federal Government, and I think King County serves as an example of how the Federal Government can perform an important role in helping to improve the plight of children in the court system. As a result of that project 10 years ago, King County was one of the first to develop protocols for inter-agency cooperation, to institute a joint interviewing system, and to organize regular network meetings of child abuse professionals. All of those are still going on today. The Federal money helped to stimulate those agencies to examine their procedures and come up with better solutions.

That is just one example of many programs throughout the country that district attorneys have been involved in, and I have indicated some of those in my written testimony that I will not repeat here.

Let me try briefly to point out to you what I see, based on my experience and based on the experience of my colleagues, the prosecutors who handle these cases, to be the remaining problems despite the progress that we have made, with some ideas for solutions that the Federal Government can be involved in.

I see a continuing problem in that there is still a lack of acknowledgment that child abuse is a serious crime in some camps. And that often takes the form of treating child abuse within families as somehow it is less serious and less deserving of attention in the criminal system than other forms of child abuse. I recommend that the Federal Government continue to strengthen efforts to support the legitimate role of law enforcement in all child abuse cases, and that include mandatory immediate notification of law enforcement, when child protection agencies receive reports of potential criminal child abuse, and that policies requiring joint investigative efforts between law enforcement and other agencies be in place throughout the Federal Government and in State and local governments.

I think a continuing problem is the inadequate and uneven response. We do a very good job in many places, but in other places we do not do as good a job, which points out the need for training to continue to be made widely available to all professionals. Particularly in the judicial system, prosecutors are in the best position, I think, to advocate strongly for children. You can have all the support services in the world present in a county and in a court system. But if the prosecutor is ill trained, the child in the courtroom will suffer as a result. So I think prosecutors, in particular, can benefit from better training, and prompt, joint investigative efforts will benefit all children who are victims of abuse.

A third problem that exists that is a very serious problem is the existence of a backlash now which questions the extent and validity of child abuse. Ms. Gooch has referred to it: People saying that most reports are false; therefore, we should cut down the number of reports that are made or the number of investigations that are made. That would be a mistake. I think the Federal Government needs to take decisive action to address this backlash and to counter the false claims that are made by some of the advocates of the backlash. In particular, Federal programs and policies should be based on the best and most recent research available. And those policies should not be policies which cut back on our efforts in this area.

A fourth problem as I see it is the attitude that children should be kept out of court at all costs, because we presume often—I think wrongly—that court is necessarily harmful to children. That results in cases either not being filed at all, as has been referred to, or they are inappropriately compromised and misdemeanor pleas, for instance, are taken to very serious child abuse crimes in the guise of protecting children from this horrible criminal court experience.

Children, when they are properly prepared, when they are treated with fairness and dignity, can gain an important sense of vindication from participation in court. You have before you Judge Schudson's book and you will hear about programs such as Ms. Gooch's, which all provide specific examples of what can be done to help children go through the court process. The Child Victims Bill of Rights that has been introduced by Senator Reid and Congressman DeWine is an important step forward in this effort.

Our staff on the National Center is privileged to be working closely with Senator Reid's staff now on the language of the bill, because we recognize some of the same concerns that you have raised and that have been raised by Judge Schudson about the language of the bill. But the bill, the intent of the bill is very good, and I think there is much that can be done with it that would be very positive and serve as a role for those States that have not yet adopted those kinds of reforms in their system.

Last, I see a significant problem in that we are not paying enough attention to physical abuse victims, to child fatality cases, and to drug-related child abuse cases. When we talk about how children are treated in the court system, most of our energy and attention is focused on child sexual abuse victims. They certainly deserve that attention and energy, but at the same time we have not given comparable attention to the serious problems of physical abuse and severe neglect.

As Senator Reid pointed out in his opening statement, the number of children killed at the hands of abusers is rising. It is a serious problem. We must give those child victims the same kind of concern and attention in the judicial system as we say all child abuse victims deserve.

In particular, the statistics on the relationship between drug-abusing parents and child abuse are tremendously appalling. And we need to do more to address that inter-relationship, and I think the Federal Government can provide an important leadership role in that area.

Our center, together with the National District Attorneys Association, will be working to form a task force which will be headed by prosecuting attorney Steve Goldsmith of Indianapolis to help prosecutors gets the information they need to design wise policies that can guide them in the area of their increasing caseloads of drug-related child abuse cases.

In conclusion, I would just like to say that we are still presented with significant challenges in the field of how we respond to child abuse and how we treat child victims in the judicial system. The Chinese idiogram for challenge consists of two symbols: one signifying danger and the other opportunity. We have many opportunities to learn from and build on our progress so far. We cannot, however, afford to ignore the dangers which threaten to undo some of that progress. The challenge is to maintain the commitment and not become complacent, and, as you have said, Mr. Chairman, not let child abuse go back into the closet.

Thank you.

[The prepared statement of Ms. Toth follows:]

NATIONAL DISTRICT ATTORNEYS ASSOCIATION
1033 NORTH FAIRFAX STREET, SUITE 200, ALEXANDRIA, VIRGINIA 22314
(703) 549-9222

Testimony

of

Patricia A. Toth
Director

National Center
for Prosecution of Child Abuse

on behalf of

National District Attorneys Association

Before

United States Senate
Committee on the Judiciary

Hearing on

Child Abuse Victims
in the Judicial System

May 16, 1989

Good morning, Mr. Chairman and members of the Committee. I appreciate the opportunity to testify before the Senate Judiciary Committee and share the views of prosecutors on the critical needs of child abuse victims. I am Patricia A. Toth, Director of the National Center for Prosecution of Child Abuse. The National Center is a program of the National District Attorneys Association's nonprofit affiliate, the American Prosecutors Research Institute.

CHILD ABUSE IS A CRIME

Only ten years ago, there would have been little to say about the problems of child abuse victims in the judicial system. Child abuse was largely ignored as a crime and children were rarely seen in criminal court. Police and prosecutors had little experience dealing with children as victims and almost no contact with the variety of child welfare, medical, mental health and other agencies involved in child abuse cases. With the passage of sweeping new reporting laws accompanied by extensive media attention to the needs of child abuse victims, that situation has changed dramatically and fundamentally.

In the last ten years, a growing avalanche of cases have been referred to law enforcement for investigation and possible prosecution. Their volume and complexity have been unprecedented, calling for new kinds of training, resources, organizational approaches, networks, laws and court reforms. At the heart of this influx of cases is the recognition that child abuse is a serious crime for which offenders must be held accountable, and the belief that children deserve equal justice under the law.

PROSECUTORIAL LEADERSHIP

The experience of prosecutors--perhaps more than any other group involved--symbolizes the magnitude and potential for positive change in our response to child abuse. While latecomers to the field, many district attorneys have taken leading roles developing legislation protecting child victims, organizing interdisciplinary teams to investigate and review child abuse cases, providing training to professionals unused to working with the courts, creating special child abuse and victim-witness support units within their own offices, advocating aggressively for court innovations and through the National District Attorneys Association, creating the National Center for Prosecution of Child Abuse.

Enforcement of criminal laws prohibiting child abuse is now viewed by most district attorneys as one of their most important responsibilities. It is in the district attorney's office where the buck stops and the decision to prosecute a case must be made. The decision to go to trial is often extremely difficult and depends on many factors, but the reasons for going forward serve both the interests of victims and the community:

1. Criminal intervention clearly establishes that perpetrators are solely responsible for their abusive behavior and that the children are innocent victims.

2. Successful prosecutions lead to public identification of offenders; educate the community about child abuse; underscore that such behavior is unacceptable; and deter others from committing similar crimes.

3. Punishment through the criminal justice system validates the victim's and society's sense of fairness. It makes clear that

older people have no right to exploit the relative weakness of children and will suffer negative consequences if they do.

4. As part of a criminal sentence, the court can order: restitution for victims so that needed services like counseling can be obtained; offender treatment; and/or incarceration of offenders with or without treatment. These options provide the most effective incentive for offenders to refrain from further child victimization--a particularly important objective given research findings that child abusers present a high risk of re-offending against other children.

5. A criminal conviction results in a criminal record that will follow a perpetrator from state to state unlike a social service record.

6. Effective participation in the criminal justice system can help victims regain a sense of control over their lives and minimize feelings of self-blame.

Prosecutorial responses have taken a variety of forms depending on community size, resources and unique characteristics. While no single approach applies to every community, the feature common to all successful efforts is a commitment to interdisciplinary cooperation. For example, in my own hometown of Seattle, King County Prosecuting Attorney Norm Maleng created a Special Assault Unit in 1979 that works closely with medical, treatment and research centers dealing with child abuse. King County, as a result of federal LEAA funding, was one of the first jurisdictions to institute joint interviewing of child victims in which child protective services, police and the district attorney's office all participate; to develop protocols for interagency cooperation; and organize a regular "network meeting" of child abuse professionals. It is an excellent example of how federal resources can stimulate agencies to create solutions tailored to local circumstances.

Middlesex County (MA) District Attorney Scott Harshbarger recently established a major new child abuse prosecution unit which will work with a nonprofit victims agency to review and provide support services to the over 500 cases of physical abuse, sexual abuse and exploitation, and fatality cases reported yearly. In Pennsylvania, the Child Abuse Prosecution Assistance Unit in the Attorney General's Office and the Pennsylvania District Attorneys Association are joining together with the National Center to cosponsor the first national conference on investigation and prosecution of child homicides this fall.

PROBLEMS OF CHILD ABUSE VICTIMS IN THE COURTS

Despite often remarkable progress the legal system has made to accommodate a new and particularly vulnerable class of victims, significant challenges and problems remain.

* **There is a continuing lack of acknowledgment that child abuse is a criminal offense.** This lack of acknowledgment translates into failure to report cases of child abuse, reluctance to seek legal redress, lack of cooperation with law enforcement personnel, and a new and disturbing trend to limit the reports accepted for investigation or services by child protection agencies. Increasingly, child welfare agencies are adopting policies that narrow the definition of child abuse and their corresponding responsiblity to respond. Unless prosecutors and police are independently notified of cases that social service agencies reject, such cases are unlikely to be addressed. (Under proposed changes in Maryland, for example, nine categories of abuse and neglect including drug-related cases, will be eliminated from those requiring investigation or provision of services by child protection agencies. It is inevitable that

many victims will not be identified and many child abuse crimes will go unpunished.)

* **The response to child abuse reports is inadequate and uneven in many instances because of lack of specialization, lack of training, and lack of interdisciplinary cooperation and communication.** A recent Center survey of prosecutors assigned to child abuse cases indicated most were inexperienced, were rotated frequently to other assignments, or expected to leave government service or move from trial to administrative status if they stayed. Further, even with a stable workforce, the need for continuing advanced training is critical because of changes in laws and procedures affecting child abuse litigation. The lack of adequate resources for training, prompt attention to alleged victims, treatment, medical expertise, and in-depth investigations all compromise the legal system's response to child abuse.

* **A sharp public and media backlash to child abuse reports, particularly reports of child sexual abuse, threatens to undermine progress in building public awareness of abuse and the needs of child victims.** Faced with shocking statistics on the prevalence of child abuse and increased willingness of district attorneys to prosecute such cases, there has been a movement by some segments of the public and professional groups to disparage the validity of such reports, discredit the reliability of children, and accuse parents, social workers and prosecutors of distorting the facts for personal gain. While the effectiveness of the backlash is hard to measure, it undoubtedly has slowed efforts to increase resources for combatting child abuse and discouraged some who might report abuse from coming forward.

* **Many professionals cling to the notion that courtroom testimony is necessarily harmful to children and should be**

avoided at all costs. Rather than emphasize reforms aimed at eliminating delay and making courts more comfortable for child victims, they concentrate their efforts on measures designed to keep children out of the courtroom. The result is that many criminal cases for which offenders might have been held accountable are inappropriately plea bargained or do not get tried, and victims receive second-hand or no justice at all. Unquestionably when cases are poorly handled and trials delayed, the suffering of child victims is prolonged and can be worsened. However, according to both research and experience, the converse is true when prosecutors respond promptly and with sensitivity and skill. The greatest need for many victims, according to experts, is to have a voice and feel they were treated fairly. Under the guise of sparing children the perceived "trauma" of court, we may be denying them a chance to be heard and the ability to take a significant step toward their own recovery.

* **Inadequate attention has been paid to physical abuse, severe neglect, fatality and drug abuse-related cases.** Our efforts in improving judicial responses have focused on child sexual abuse cases--an important area in which we still have much to learn. However, physical abuse and neglect cases still constitute the majority of reported cases, with recent research indicating child homicide is the leading cause of death for children under age one. The rising tide of substance abuse-related cases cannot be ignored. In 1988, over 73 percent of New York's neglect-related child fatalities were tied to parental drug abuse, and over 90 percent of caretakers reported in the District of Columbia for child abuse were substance abusers. Many child abuse-related homicides are mistakenly identified as accidental or SIDS deaths, because of lack of training or sufficient cooperation among legal, medical and social service professionals.

RECOMMENDED SOLUTIONS

* **Together with state and local governments, the federal government should strengthen efforts to support the legitimate role of law enforcement in child abuse intervention.** We diminish the seriousness of child abuse--particularly when it occurs within families--when we work to keep cases out of court. While criminal prosecution alone is not the answer, it is a critical element in an effective response to child victimization. When effective coordination takes place, parallel proceedings in criminal and civil courts can complement each other. Coordination must also be strengthened through statutes and procedural guidelines calling for mandatory immediate notification of law enforcement when child protection agencies receive reports of potential criminal child abuse. Policies requiring joint investigative efforts--already in place in many communities--should be implemented throughout the country.

* **Training aimed at improving case handling and promoting interagency cooperation must be made widely available.** While specialized and ongoing training are critical for all professionals dealing with child victims, prosecutors are in a unique position to benefit from such efforts. A knowledgeable district attorney can be an aggressive advocate for children, thereby educating inexperienced judges and generating additional support for child victims in the criminal justice system even when other support services are inadequate. However, children will always be at a disadvantage in the judicial system if prosecutors are unskilled, despite the presence of other experienced and sensitive professionals. In addition, greater opportunities should exist for federal prosecutors to benefit from the progress and resources of child abuse prosecutors at the local level.

* **The federal government should take decisive action to address the backlash and counter false and misleading claims about the numbers and nature of child abuse reports.** Policies and programs supported by federal dollars should be based on the best and most recent research available. For instance, claims that the majority of child abuse and neglect reports are false or "unfounded," thereby wasting the time of social service investigators, have justified policies that discourage reporting or investigating and question the credibility of children, particularly in sexual abuse cases. The greatest body of available research, however, indicates that deliberately false reports, even in custody disputes, are rare. Most false reports, when they do occur, originate with adults and not children. In addition, contrary to backlash advocates' claims, substantiation rates for abuse reports have increased significantly, according to the latest INCIDENCE STUDY of the National Center for Child Abuse and Neglect, despite a dramatic rise in overall reports. Policymakers should take account of valid criticisms of system failures, such as mishandled investigations, and take steps to correct poor performance through training, oversight, resource provision, and an insistence on accountability at every level.

* **The federal government should continue to support reforms in the judicial system that increase children's ability to be effective participants.** The Child Victim's Bill of Rights introduced by Senator Reid and Congressman DeWine is an important step forward in protecting child victims. The National Center is privileged to be working closely with Senator Reid's staff on the language of the bill, and we hope the legislation will serve as a model for states which have not yet adopted such far-reaching reforms. An especially important provision is the call to reduce continuances in child abuse cases and give child abuse prosecutions precedence on the court docket. Resources must also

be provided to share information about the most effective means of supporting child victims and witnesses in the judicial system.

***Policy leadership and funding both for research and training are needed to address the issues of physical abuse, severe neglect, child fatalities and the interrelationships between drug abuse and child abuse.** Many of the lessons we have learned concerning the value of interdisciplinary coordination on sexual abuse cases can be applied to these areas. Recognition of the growing number of child fatalities related to abuse and neglect is reflected in creation of a new National Commission on Child and Youth Deaths and a growing movement in states and counties to establish child death review teams which involve medical experts, prosecutors, social service representatives, and police. These initiatives must be encouraged. The National District Attorneys Association is forming a task force headed by Indianapolis Prosecuting Attorney Stephen Goldsmith to help design policies that can guide prosecutors facing increasing caseloads of drug-related child abuse cases.

NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE

Through the National Center, prosecutors have come together to share their experiences and build a clearinghouse for legal resources on child abuse cases. This collaboration is reflected in the publication of INVESTIGATION AND PROSECUTION OF CHILD ABUSE, a comprehensive manual widely recognized as the most authoritative guide produced on child abuse case handling. The Center also provides training throughout the country, offers extensive legal and tactical assistance to local prosecutors, and keeps an interdisciplinary constituency informed about statutory and case law developments, study findings, court innovations, prosecutorial initiatives, promising approaches, and emerging needs through case consultations, regular publications and ongoing research. The National Center for Prosecution of Child Abuse was created by the Board of Directors of the National District Attorneys Association in 1985, and is supported by the Office of Juvenile Justice and Delinquency Prevention of the US Department of Justice.

The CHAIRMAN. Thank you very much.

Doctor, welcome. I am glad you have finally arrived. We all understand the transportation net, particularly since deregulation.

Welcome.

STATEMENT OF DR. MURIEL SUGARMAN

Dr. SUGARMAN. Thank you.

I am going to try to hit the high points of my written testimony, and there is much more elaboration and explanation of the points I am going to make in that.

Mr. Chairman, members of the committee, ladies and gentlemen, my name is Muriel Sugarman, M.D. I am a fully trained, board eligible child psychiatrist on the faculty of Harvard Medical School and on the staff of the Massachusetts General Hospital in Boston. I have special expertise in the psychiatric evaluation and treatment of children from birth to age six. I also have extensive experience in the evaluation and treatment of children who have allegedly been sexually abused.

I have been directly involved in evaluation and/or treatment of about 21 children who were alleged to have been sexually abused during visitation following parental separation or divorce. Almost all of these allegations involved children under age six.

I am aware of a significant number of similar cases in Massachusetts and throughout the country. The magnitude of this problem is alarming. The management of these cases by the divorce courts has been inconsistent and uninformed at best; damaging and punitive to children and the nonabusive parent at worst.

Let me first state that the subject of child sexual abuse stirs in all of us painful, uncomfortable, difficult, and sometimes overwhelming feelings. The first response of those without direct experience of this topic is horror and disbelief. Yet statistics show that there is a veritable epidemic of sexual abuse.

Many adults are skeptical of children's disclosures. They, and the nonabusing adults to whom they disclose the abuse, are often disbelieved. This is particularly true when the allegations arise at the time of parental separation or divorce, when custody and visitation issues are being decided. In part, this is because it is far easier to believe that a child or a reporting parent lied than to believe that an apparently normal adult committed the abusive behaviors disclosed.

A number of allegations of sexual abuse cannot be validated or substantiated for a variety of reasons. These unfounded allegations are often called "false." Many experts feel that few allegations are deliberately false. Allegations made out of vindictiveness or manipulativeness probably occur in no more than about 5 to 14 percent of cases. Most allegations are made in good faith, and the majority of them are true.

The responses of divorce courts to allegations of abuse have been far different from the responses of the courts which deal with child protective issues in intact families. In working intensively with many of these cases, certain distinct and troubling patterns have emerged in the responses of the protective agencies and the judicial system.

Twenty children, including four pairs of siblings, were alleged to have been sexually abused by their biological fathers during paternal visitation after parental separation or divorce.

As many family members as possible underwent extensive and complete psychiatric evaluation by myself and/or colleagues. There was also one case in which a close relative of the father abused a child during paternal visitation.

All of these children presented with multiple indicators of sexual abuse. In all but one case, the allegations of sexual abuse were verified by at least one other agency or sexual abuse clinician. However, the children were sometimes also evaluated by one or more clinicians who were not properly qualified and who did not find sexual abuse to have occurred.

There was only one deliberately false allegation of child sexual abuse by a father, and in that case the child had been sexually abused by a friend of the father during a paternal visit.

In the 19 validated cases of paternal sexual abuse occurring during visitation, the average age at evaluation was 4 years, 1.5 months. The average age of disclosure was about 3 years, 8.5 months. The average age when the abuse apparently actually began was 2 years, 10.5 months. All but one child were under age 5 when the abuse began.

Sixty-three percent of the abused children were female; 37 percent were male. In 71.4 percent of families in which there was more than one child, one or more siblings had also been sexually abused by the father.

Only one father was indicted and prosecuted 2 years after the first allegations were made. He was acquitted. None of the other fathers were prosecuted.

In 73.7 percent of the cases, the divorce court system did not believe the allegations. The conclusions of evaluators without proper qualifications who found no evidence of sexual abuse were accepted over those of qualified evaluators. About 58 percent of the children were inadequately protected from further sexual abuse, from intimidation and harassment by the perpetrator, and from fear of retaliation.

Protective agency supervisors failed to be physically present at all times during visitation. The court or protective agency sometimes arranged supervision by parents, siblings, friends, or coworkers of the alleged perpetrator who sometimes left the child alone with the father.

Over half the children were forced against their will to have frequent, prolonged, and poorly supervised contact with the alleged perpetrator, regardless of the degree of traumatization of the child.

Mothers were threatened with loss of custody, contempt of court, and jail if they refused to comply with these visitation orders.

Recommendations and reports concerning the degree of symptomatic behavior and traumatization suffered by the children were ignored by judges, guardians, and divorce court personnel.

In two cases involved three children, recommendations were made by guardians and/or judges to transfer custody to the father, despite the still unheard evidence of sexual abuse by him.

Some mothers eventually withheld visitation against court orders and were threatened with jail. One mother went to jail for a week, later fled with her children into the "underground railroad" when, after her husband was acquitted of criminal charges, the divorce court judge gave custody to the child protective agency in that State.

Significantly, 53.3 percent of the mothers actually had great initial difficulty believing that their husband had abused his own child or children.

About 68 percent of the children had three or more child sexual abuse evaluations, not counting physical examinations.

I feel I can offer some suggestions regarding how procedures might be improved. I shall also comment on S. 533, specifically on the Federal Child Victims Bill of Rights.

The provisions of S. 533 regarding testimony, recorded depositions, statements of sexual abuse, anatomical dolls, capacity and limits on interviews would provide much needed relief for child sexual abuse victims who are involved in criminal prosecutions.

If the provisions regarding privacy and address protection can be applied without blanketing an entire proceeding with secrecy, both the privacy of the child and the need for public scrutiny in such cases could be served. There is a great need for public scrutiny of the conduct of sexual abuse cases and of sentencing decisions. This is true also in civil cases such as divorce proceedings.

I also support the use of multidisciplinary assessment teams and the extension of the statute of limitations as well as the provision for a speedy trial.

I would like to suggest an amendment to the section regarding the appointment of a guardian ad litem. The guardian ad litem should have special training with respect to child sexual abuse and should also have some knowledge and expertise concerning child development and child psychology as well. He or she would then be in a better position to make recommendations based primarily on the well-being of the child.

The provision for a child attendant is one which could be of tremendous value to a child victim witness. In my opinion, the child attendant should also function in lieu of an interpreter between the adults in the court—the judge and the attorneys—and the child. With proper training, such an individual could facilitate testimony without interfering with the rights of the accused, by rephrasing the questions of adults for the benefit of the child and, if necessary, rephrasing the child's responses for the benefit of the adults.

The following recommendations refer more specifically to allegations of sexual abuse after parental separation or divorce. The most important safeguards for the child's well-being are to protect the child from the possibility of further abuse; to protect the child from intimidation, retaliation, and pressure to recant; to protect the child from repeated questioning and evaluation and from repeated physical examinations for sexual abuse; to provide in a situation where contact between the child and the alleged perpetrator may be in the best interests of the child, for appropriate adult supervision of visitation by an objective individual with knowledge of child sexual abuse and clear understanding of the child's need for protection from abuse and intimidation.

Courts should maintain a list of qualified experts, with recognized criteria for qualification in the area of child sexual abuse, to be selected and appointed by the court to evaluate and/or investigate allegations of sexual abuse during custody and visitation determinations.

Child abuse proceedings ought to be required by law to take precedence over divorce and custody proceedings. Ideally, child abuse proceedings should be carried out in the same courts which handle all forms of child maltreatment in nondivorcing families. Judges, probation officers, and other court personnel who primarily handle divorce cases often do not have the knowledge and experience to determine the best decisions in a case involving child sexual abuse.

No disposition of custody and visitation issues should be made until a determination of the validity of child sexual abuse allegations has been performed by qualified experts.

Custody and visitation decisions should never be used as a means to punish the reporting parent for making what may be thought to be false allegations. The abuse may later be substantiated as the child feels safer and more protected or becomes old enough to adequately verbalize what occurred.

A child should only be removed from the custodial reporting parent is the court can show clear evidence that the actions of that custodial parent are so harmful as to outweigh the harmful effects of removing the child. Judges should be required to demonstrate that they have heard evidence of such harmful parental actions from recognized experts in the field of child abuse and that no other course is available to protect the child.

In my opinion, there should never be an instance in which a mother is incarcerated for prolonged periods of time for trying to protect her child from sexual abuse. This punishes the child by separating him or her from a trusted custodial parent during a highly stressful period, and sends a chilling message to all children whom we wish to encourage to disclose sexual abuse.

I wish to thank the committee for allowing me to express my views on these extremely timely and important issues. Thank you.

[The prepared statement of Dr. Sugarman follows:]

TESTIMONY OF

MURIEL SUGARMAN, M. D.

before the

UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

MAY 16, 1989

on the subject of

CHILD SEXUAL ABUSE

and the

TREATMENT OF VICTIMS IN THE JUDICIAL SYSTEM

Mr. Chairman, Members of the Committee, Ladies and Gentlemen:

My name is Muriel Sugarman, M. D. I am a fully trained, Board eligible, child psychiatrist, licensed to practice medicine in the Commonwealth of Massachusetts since 1963. I have practiced child psychiatry for the past 23 years, am a Clinical Instructor in Psychiatry on the faculty of Harvard Medical School, and an Assistant in Psychiatry on the staff of Massachusetts General Hospital in Boston.

I am also currently co-director of the Infancy and Early Childhood Program in the Department of Child Psychiatry at MGH. This program specializes in the evaluation and treatment of children from birth to age six who have emotional, behavioral, developmental, or other psychosocial problems. The program began in 1981. Since that time, we have received an increasing number of referrals requesting evaluation of sexual abuse allegations in children under age six.

In addition to having evaluated a number of allegations of sexual abuse by family members in intact families or by individuals outside the immediate family, I have been directly involved in evaluation and/or treatment of about twenty-one children who were alleged to have been sexually abused during visitation following parental separation or divorce. Almost all of these allegations involved children under age six.

I am aware of a significant number of similar cases in Massachusetts and throughout the country. The magnitude of this problem is alarming. The management of these cases by the divorce courts has been inconsistent and uninformed at best; damaging and punitive to children and the non-abusive parent at worst.

Let me first of all state that the subject of child sexual abuse stirs in all of us painful, uncomfortable, difficult, and sometimes overwhelming feelings. The first response of those without direct experience of this topic is horror and disbelief. Yet statistics show that there is a veritable epidemic of sexual abuse: One female child in three or four and one male child in six have been sexually abused by the age of 18. In 1986, the reported prevalence of sexual abuse was 2.2 per thousand, a total of 186,000 children.

Sexual abuse, particularly when the victim is a very young child, is very difficult to detect and even more difficult to prove. It occurs in secret. There are no eyewitnesses. Adult perpetrators have often spent much of their lives learning to hide their sexually abusive tendencies and behaviors. The victim is a trusting, ingenuous, obedient child. Often the perpetrator uses manipulation, bribery, seduction, coercion, intimidation, and threats to secure the child's compliance and silence.

In my experience, the most vulnerable victims are those under the age of six. In David Finkelhor's study in Boston in 1984, 32% of the victims were under six and 11.5% were two years old. In the American Humane Society's figures for 1978, out of 4100 known victims, 20%, 854 children, were under six. These are also the children who are most difficult to evaluate as to the validity of sexual abuse allegations.

Children under six are cognitively immature. They trust adults and see them as powerful and all-knowing. Sexual behaviors of the type inflicted by abusive adults on children are totally outside their awareness and comprehension. These children have little ability to describe the details of events such as time, place, frequency, etc. They are immature in their language development, without the vocabulary to describe what has been done to them or the understanding to comprehend questions posed by adults in adult language. They are dependent, helpless, and want to please adults.

Young children, when approached in a manner appropriate to their stage of development, are often able to describe with surprising explicitness and detail--in their own age-appropriate language--sexually abusive experiences. They also may be able to demonstrate abusive behaviors on dolls or even make drawings of the abuse. But they may be so linguistically immature, confused, frightened, or intimidated that they cannot talk about or demonstrate abuse at all.

Many adults are sceptical of children's disclosures. They, and the non-abusing adults to whom they disclose the abuse, are often disbelieved. This is particularly true when the allegations arise at the time of parental separation or divorce, when custody and visitation issues are being decided. These sceptics insist that children lie, fantasize, are "brainwashed", or manipulated when they make such allegations against an apparently respectable adult. In part this is because it is far easier to believe that a child or reporting parent lied, than to believe that an apparently normal adult committed the abusive behaviors disclosed.

No one who knows children would say they never lie. However, children usually lie to escape punishment or to get their way. And very young children in particular do not lie skillfully. They often are very transparent or trip themselves up. Children also fantasize, and may tell clearly unbelievable stories. But a child cannot make up explicit sexual details about exploitive and abusive adult sexual behaviors of which he or she developmentally has no intellectual awareness.

Children are suggestible, or might repeat something told them by an adult. However, they would use language and vocabulary inconsistent with their developmental stage; would appear to be reciting the material; would verbalize the disclosure without the accompanying concordant feelings and behaviors seen in cases of genuine abuse; and/or would repeat the information out of context. Any adult who has tried to teach his or her children to say "please" and "thank you" reliably on cue knows how difficult it is for young children to remember and repeat phrases taught them.

A number of allegations of sexual abuse cannot be validated or substantiated for a variety of reasons. These unfounded allegations are often called "false". Many experts feel that few allegations are deliberately false. There are allegations made due to misunderstandings or mistaken concerns. There are allegations which cannot be proven or disproven because of the age or emotional state of the victim, or serious mishandling of the evaluation process. There are allegations which may be made by an emotionally disturbed adult, either because of psychosis or obsessional ideas resulting from that adult's own history of having been abused. But allegations made out of vindictiveness or manipulativeness probably occur in no more than about 5 to 14% of cases. Most allegations are made in good faith, and the majority of them are true.

In my work with children alleged to have been sexually abused, I have encountered invalid allegations of all of the types discussed above, as well as a number of allegations which--by a preponderance of evidence--are valid. Yet only in the cases of abuse allegations made in the context of separation or divorce have I encountered intractable disbelief of valid allegations.

In working with such cases, I have become convinced that the sequelae of parental separation and divorce may themselves contribute to the likelihood of sexual abuse. It also sometimes occurs that a child is more likely to disclose abuse when the father/perpetrator has left the home and the child anticipates frequent unsupervised contact with him. Some parental separations have actually been precipitated by a child's disclosure or the mother's detection or witnessing of the abuse.

But the responses of divorce courts to allegations of abuse have been far different from the responses of the courts which deal with child protective issues in intact families. In working quite intensively with many of these cases, certain distince and troubling patterns have emerged--patterns in the characteristics of the abuse, the families involved, and the responses of the protective agencies and the judicial system.

In the series of twenty-one cases in which I was directly involved (seventeen families), the following experiences were of note:

-- Twenty children, including four pairs of siblings, were alleged to have been sexually abused by their biological fathers during paternal visitation after parental separation or divorce.

-- All of these children, their mothers, and whenever possible their fathers, underwent extensive and complete psychiatric evaluation, including specific evaluation of the sexual abuse allegations.

-- During this same time period (1981-1987), there was also one case in which a close relative of the father abused a child during paternal visitation.

-- All of these children presented with multiple indicators of sexual abuse.

-- In all but one case, the allegations of sexual abuse were verified, not only by myself, but usually by at least one other agency or sexual abuse clinician. However, the children were sometimes also evaluated by one or more clinicicans who were not properly qualified and who did not find sexual abuse to have occurred.

-- There was only one deliberately false allegation of child sexual abuse and, in that case, the child had been sexually abused by a friend of the father during a paternal visit.

The following data apply only to the nineteen validated cases of paternal sexual abuse occurring during visitation:

-- Average age at evaluation was 4 years, 1 and 1/2 months. (As can be seen in Table I, two children were referred for evaluation several years after the abuse had occurred, and one was seen for a re-evaluation at age 8, which elevated the average age of evaluation.)

-- The average age at disclosure was about 3 years, 8 and 1/2 months. (Two children did not disclose the abuse for four years until their father began to demand visitation with them after a long voluntary hiatus; this also elevated the average.)

-- Average age when abuse apparently actually began was 2 years, 10 and 1/2 months; all but one child were under age 5 when the abuse began (See Table I).

-- Sixty-three of the abused children were female; thirty-seven percent were male (Table II).

-- In seven families, there was more than one child, and in five of those families one or more siblings had also been sexually abused, 71.4% of families with more than one child (Table III).

-- Only one father was indicted and prosecuted, two years after the first allegations were made. He was acquitted. None of the other fathers were prosecuted.

-- In 73.7% of the cases, the divorce court system did not believe the allegations, even when they had been substantiated by the child protective agency and/or experienced clinicians. The conclusions of evaluators without proper qualitifications who found no evidence of sexual abuse were accepted over those of qualified evaluators.

-- Whether or not the allegations were believed, about 58% of the children were inadequately protected from further sexual abuse, from intimidation and harassment by the perpetrator, and from fear of retaliation.

-- In several instances, protective agency supervisors failed to be physically present at all times during visitation.

-- In other cases, the court or protective agency arranged supervision by parents, siblings, friends, or co-workers of the alleged perpetrator, individuals who were not objective, not trained, were totally inappropriate to act as supervisors, and who sometimes left the child alone with the father.

-- In many instances, there was constant pressure for "normalization" of visitation, i.e. dropping supervision and reinstituting overnight and weekend visitation, often from the children's guardians ad litem.

-- Over half the children were forced against their will to have frequent, prolonged, and poorly supervised contact with the perpetrator, regardless of the degree of traumatization of the child, expressed preference of the child, and/or wishes of the custodial mother.

-- Mothers were threatened with loss of custody, contempt of court, and jail, if they refused to comply with these visitation orders or continued to press for them to be rescinded.

-- Recommendations from this clinician and others, reports concerning the degree of symptomatic behavior and traumatization suffered by the children were ignored by judges, guardians, and divorce court personnel.

-- In two cases involving three children (15.8%) recommendations were made by guardians and/or judges to transfer custody to the father, despite the still unheard evidence of sexual abuse by him.

-- Certain patterns of pathology emerged in the histories of a number of the alleged perpetrator/ fathers which indicated that many of them had been physically abusive to their spouses, were sociopathic, impulsive, narcissistic, abused substances, and/or engaged in perverse sexual practices and use of hard core pornographic materials.

-- Patterns of pathology among the mothers included low self esteem, depression, inability to be assertive, and dependency; few of the mothers had personality disorders of a more pathological nature, although many appeared sicker during the stress of learning about their child's abuse.

-- All of the mothers exerted tremendous efforts to protect their children once the sexual abuse was disclosed.

-- In contrast to the mothers often described as colluding in the abuse of the child, they sought qualified evaluation and treatment for the children, exhausted their financial resources to obtain protection within the legal system.

-- Some eventually withheld visitation against court orders, were threatened with jail; one went to jail for a week, later fled with her children into the "underground railroad" when, after her husband was acquitted of criminal charges, the divorce court judge ordered that custody be given to the child protective agency.

-- Seventy-three per cent of the mothers felt anger and rage about the abuse and 66.7% felt guilty for not having prevented it.

-- Significantly, 53.3% of the mothers initially had great difficulty believing that their husband had abused his own child or children and had to overcome emotional denial of what their child was telling them.

-- About 68% of the children had three or more child sexual abuse evaluations, not counting physical examinations.

-- It should be noted that, as occurs in sexual abuse cases in general, very few children were found to have physical evidence of sexual abuse--in this sample, only 4 (21%).

-- Two children retracted their allegations or were silenced; two were too young to disclose the abuse verbally.

Through experience in cases involving sexual abuse during visitation (following parental separation and divorce), through experience in other types of child sexual abuse cases, through extensive reading of the latest professional literature on these issues, and through extensive understanding of child development and child psychology in general, I feel I can offer suggestions regarding how procedures might be improved. I shall also comment on S. 533, Senator Reid's "Federal Victim's Services and Protections Compliance Act" and "Federal Child Victim's Bill of Rights."

-- The provisions of S. 533 regarding testimony, recorded depositions, statements of sexual abuse, anatomical dolls, capacity, and limits on interviews (Sec. 201, Rule 52.1, Paragraphs [a], [b], and [c]) would provide much needed relief for child sexual abuse victims who are involved in criminal prosecutions.

-- If the provisions of S. 533 regarding privacy and address protection (Sec. 201, Rule 52.1, Paragraph [d]), can be applied without blanketing an entire proceeding with secrecy, both the privacy of the child and the need for public scrutiny in such cases could be served. There is a great need for public awareness of child sexual abuse as a significant problem and a need for public scrutiny of the conduct of such cases and of sentencing decisions. This is true also in civil cases such as divorce proceedings.

-- I also support the use of multidisciplinary assessment teams and the extension of the statute of limitations as delineated in Paragraphs [e] and [f], as well as the provision for a speedy trial (Paragraph [i]).

-- I would like to suggest an ammendment to the section regarding the appointment of a guardian ad litem (Paragraph [g]). The guardian ad litem, to be effective in cases involving allegations of child sexual abuse, should have special training with respect to child sexual abuse and should also have some knowledge and expertise concerning child development and child psychology as well. If the law guardian has such training and expertise, then he/she would be in a better position to make recommendations based primarily on the well-being of the child. Too often, in cases regarding custody and visitation when there have been allegations of child sexual abuse, law guardians become preoccupied with being impartial and fair to the adult parents, rather than advocating for the child's true interests, because they are not knowledgeable about children and their needs.

-- The provision for a child attendant is one which could be of tremendous value to a child victim witness (Paragraph [h]). In my opinion, the child attendant should also function in lieu of an interpreter between the adults in the court (judge, attorneys) and the child, since most adults have great difficulty adjusting their discourse to the linguistic level of small children. With proper training, such an individual could facilitate testimony without interfering with the rights of the accused, by rephrasing the questions of adults for the benefit of the child and, if necessary, rephrasing the child's responses for the benefit of the adults.

The following recommendations refer more specifically to allegations of sexual abuse after parental separation or divorce:

-- When an allegation of child sexual abuse is raised, particularly against a parent in a separation or divorce case, the most important safeguards for the child's well being are:

    ** to protect the child from the possibility of further abuse by assuring that the child is never alone with the alleged perpetrator until or unless the allegation is disproved;

** to protect the child from intimidation, retaliation, and pressure to recant by the alleged perpetrator, or any others in collusion with that individual, by preventing any contact with such individuals (including telephone calls) during the investigation of the allegations;

** to protect the child from repeated questioning and evaluation, and from repeated physical examinations for sexual abuse, by allowing only highly qualified professionals to carry out the primary evaluation and investigation;

** to protect the child's ongoing relationship with the alleged perpetrator as much as possible, but only when that is consistent with the above protections and does not further expose the child to trauma; and

** to provide, in a situation where contact between the child and the alleged perpetrator may be in the best interests of the child, for appropriate adult supervision of visitation by an objective individual with knowledge of child sexual abuse, a clear understanding of the child's need for protection from abuse and intimidation, appointed by the court, and paid for by the alleged perpetrator.

-- There should be a legal requirement that courts maintain a list of qualified experts, with recognized criteria for qualification in the area of child sexual abuse, to be selected and appointed by the court to evaluate and/or investigate allegations of sexual abuse during custody and visitation determinations. Joint approval by the parties may present an obstacle to the selection of truly qualified individuals, but some limited input may be feasible.

-- Child abuse proceedings ought to be required by law to take precedence over divorce and custody proceedings. Ideally child abuse proceedings should be carried out in the same courts which handle all forms of child maltreatment in non-divorcing families. Judges, probation officers, and other court personnel who primarily handle divorce cases often do not have the knowledge and experience to determine the best decisions in a case involving child sexual abuse. As it stands now, in many states, a child protective agency is hamstrung when a case is in divorce court, prevented from initiating proceedings in the child protective court system to interrupt visitation or remove a child from the custody of a perpetrator in a substantiated sexual abuse case.

-- No disposition of custody and visitation issues should be made until a determination of the validity of child sexual abuse allegations has been performed by qualified experts.

-- When the possibility of child sexual abuse exists, even when it may not be immediately possible to substantiate the allegation, custody and visitation decisions should never be used as a means to punish the reporting parent for making what may be thought to be false allegations. The vast majority of allegations are made in good faith and the abuse may later be substantiated as the child feels safer and more protected or becomes old enough to adequately verbalize what occurred.

-- Removing a child from the custody of a non-abusing parent who is trying to protect the child may be used as a punishment of the parent making allegations which the court disbelieves, or may be used as a method of preventing the alleging parent from influencing the child. However, such an action may cause serious emotional hardship for the child and is a totally unacceptable reason for removal of a child from the custody of a trusted caretaker.

-- A child should only be removed from the custodial parent if the court can show clear evidence that the actions of that custodial parent are so harmful as to outweigh the harmful effects of removing the child. Judges should be required to demonstrate that they have heard evidence of such harmful parental actions from recognized experts in the field of child abuse and that no other course is available to protect the child.

-- In my opinion, there should never be an instance in which a mother is incarcerated for prolonged periods of time for trying to protect her child from sexual abuse. This punishes the child by separating him or her from a trusted custodial parent during a highly stressful period, and sends a chilling message to all children whom we wish to encourage to disclose sexual abuse. While contempt of court is a serious offense, other methods for avoiding or managing such situations should be sought immediately.

-- When hearings on allegations of child sexual abuse in custody and visitation cases are held in open court and decisions made public, concern is often expressed that this will stigmatize the child and violate the protections of confidentiality. In my experience, holding such hearings in secret and preventing decisions from being made public serves to reinforce the secrecy surrounding child sexual abuse and makes it more likely that the child will not be protected. Secrecy also conceals bias in the actions of court officers--court investigators, guardians ad litem, and judges.

In closing, I wish to thank the members of the Committee for allowing me to express my views on these extremely timely and important issues, and for their interest and willingness to hold these hearings which have the potential to provide great benefit to countless numbers of abused children.

Muriel Sugarman, MD

Muriel Sugarman, M. D.
Department of Child Psychiatry
WACC 625
15 Parkman Street
Boston, MA 02114

Telephone Number: (617)726-2724

SEXUAL ABUSE OF PRE-SCHOOL AGE CHILDREN IN THE CONTEXT OF DIVORCE VISITATION

MURIEL SUGARMAN, M. D.

DATA TABLES

PRELIMINARY DATA -- NOT TO BE QUOTED WITHOUT PERMISSION OF THE AUTHOR

NOVEMBER, 1987

SEXUAL ABUSE OF PRE-SCHOOL AGE CHILDREN IN THE CONTEXT OF DIVORCE VISITATION

MURIEL SUGARMAN, M. D. BIDIP 11/13/87

TABLE I: SEX OF CHILDREN, AGES AT ABUSE, DISCLOSURE, EVALUATION

NUMBER/SEX	AGE AT EVALUATION (Years:Months)	AGE AT DISCLOSURE (Years:Months)	AGE ABUSE BEGAN (Years:Months)	LATENCY TO DISCLOSURE (Months)
1/M	4:2	3:2	2:6	8
2/M	2:2	2:1	1:3	10
3/F	5:6	4:4	3:9	7
4/F	5:3	3:8	2:6	14
5/F	3:1	3:1	3:0	1
6/F	2:2	2:2	2:1	1
7/M	4:1	3:5	2:0	17
8/F	2:11	3:5	2:11	6
9/M	0:9	1:9	1:0	9
10/F	3:9	2:11	2:11	0
11/F	3:1	3:2	3:2	0
12/M	1:6	1:7	1:7	0
13/F	8:0	3:7	2:6	13
14/M	3:1	2:11	2:11	0
15/F	4:9	4:9	4:6	3
16/F	7:9	7:8	3:7	49
17/M	9:7	9:7	5:6	49
18/F	3:2	3:5	3:5	0
19/F	3:10	3:10	3:7	3

SEXUAL ABUSE OF PRE-SCHOOL AGE CHILDREN IN THE CONTEXT OF DIVORCE VISITATION

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TABLE II: SEX DISTRIBUTION

SEX	NUMBER	PERCENT
MALE	7	37
FEMALE	12	63

TABLE III: INVOLVEMENT OF SIBLINGS (N=15)

SIBLING STATUS	NUMBER	PERCENT
ONE CHILD FAMILY	8	53.3
SIBLING(S) ABUSED	5	33.3
NO SIBLING ABUSE	2	13.3

SEXUAL ABUSE OF PRE-SCHOOL AGE CHILDREN IN THE CONTEXT OF DIVORCE VISITATION

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TABLE IV: SYMPTOMATOLOGY (N=19)

SYMPTOM CONSTELLATION	NUMBER	PERCENT
POST-TRAUMATIC STRESS	16	84.2
TRAUMATIC SEXUALIZATION	12	63.2
REGRESSION	9	47.4
SOMATIC SYMPTOMS	8	42.1

(TOTAL MORE THAN 100%--MORE THAN ONE CONSTELLATION POSSIBLE)

TABLE V: RESPONSES OF JUDICIAL AND PROTECTIVE SYSTEMS (N=19)

RESPONSE	NUMBER	PERCENT
NO PROSECUTION	19	100.0
LEGAL SYSTEM DISBELIEF	14	73.7
INADEQUATE PROTECTION	11	57.9
FORCED CONTACT WITH PERPETRATOR-FATHER	10	52.6
RECOMMENDATION FOR PATERNAL CUSTODY	3	15.8

SEXUAL ABUSE OF PRE-SCHOOL AGE CHILDREN IN THE CONTEXT OF DIVORCE VISITATION

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TABLE VI: CHARACTERISTICS OF THE PERPETRATOR-FATHERS (N=15)

CHARACTERISTIC	NUMBER	PERCENT
SPOUSE ABUSE/VIOLENCE	12	80.0
PERVERSE SEXUAL BEHAVIOR OR PORNOGRAPHY USE	9	60.0
HISTORY OF IMPULSIVE BEHAVIOR	9	60.0
SOCIOPATHIC PERSONALITY TRAITS	7	46.7
NARCISSISTIC PERSONALITY TRAITS	7	46.7
ALCOHOL/SUBSTANCE ABUSE	5	33.3
FAMILY HISTORY INCEST OR SEXUAL ABUSE	4	26.7
POSSIBLE PSYCHOSIS	3	20.0

(TOTAL MORE THAN 100%--MORE THAN ONE CHARACTERISTIC POSSIBLE)

SEXUAL ABUSE OF PRE-SCHOOL AGE CHILDREN IN THE CONTEXT OF DIVORCE VISITATION

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TABLE VII: CHARACTERISTICS OF THE MOTHERS (N=15)

CHARACTERISTIC	NUMBER	PERCENT
LOW SELF-ESTEEM	7	46.7
SYMPTOMS OF DEPRESSION	7	46.7
HISTORY OF IMPULSIVE BEHAVIOR	7	46.7
PROBLEMS WITH ANGER AND ASSERTIVENESS	5	33.3
BORDERLINE PERSONALITY TRAITS	4	26.7
HISTRIONIC PERSONALITY TRAITS	3	20.0
DEPENDENT PERSONALITY TRAITS	3	20.0

(TOTAL MORE THAN 100%--MORE THAN ONE CHARACTERISTIC POSSIBLE)

SEXUAL ABUSE OF PRE-SCHOOL AGE CHILDREN IN THE CONTEXT OF DIVORCE VISITATION

MURIEL SUGARMAN, M. D. BIDIP 11/13/87

VIII: MOTHER'S REACTIONS TO SEXUAL ABUSE (N=15)

REACTION	NUMBER	PERCENT
PROTECTIVE BEHAVIORS	15	100.0
ANGER/RAGE	11	73.3
GUILT	10	66.7
INITIAL DISBELIEF OR DENIAL	8	53.3

(TOTAL MORE THAN 100%--MORE THAN ONE REACTION POSSIBLE)

SEXUAL ABUSE OF PRE-SCHOOL AGE CHILDREN IN THE CONTEXT OF DIVORCE VISITATION

MURIEL SUGARMAN, M. D. BIDIP 11/13/87

TABLE IX: NUMBER OF EVALUATIONS EXPERIENCED BY CHILDREN (N=19)

NUMBER OF EVALUATIONS	NUMBER	PERCENT
1-2	6	31.6
3-4	8	42.1
5-6	5	26.3

TABLE X: MISCELLANEOUS CHARACTERISTICS OF THE CASES

CHARACTERISTIC	N	NUMBER	PERCENT
PERPETRATOR BIOLOGICAL FATHER	15	15	100.0
FATHER NEVER ACKNOWLEDGED ABUSE (PERSISTENT DENIAL)	15	15	100.0
CO-PERPETRATOR INVOLVED	15	4	26.7
CHILD(REN) EVALUATED BEFORE DISCLOSURE	19	5	26.3
PHYSICAL EVIDENCE	19	4	21.0
RETRACTION/CHILD SILENCED	17	2	11.8

MASSACHUSETTS GENERAL HOSPITAL ◆ **HARVARD MEDICAL SCHOOL**

Muriel Sugarman, M.D.
Co-Director Infancy &
Early Childhood Program

Assistant in Psychiatry
Child Psychiatrist

Massachusetts General Hospital
15 Parkman Street, Boston, Mass. 02114

June 13, 1989

Senator Joseph R. Biden, Jr., Chairman
United States Senate Committee on the Judiciary
Dirksen Senate Office Building
Washington, DC 20510-6275

Attention: Scott Green, Judiciary Committee Staff

Dear Senator Biden:

I am responding to your letter of May 18, 1989. In that letter, you posed several additional questions to be included in the written record of the hearings held on May 16 on the problems that child abuse victims face in the court system.

I am also including a list of names and addresses of experts in the field of child sexual abuse who might also be able to provide important information to you and the Committee should a decision be made to pursue these issues through further hearings or by contacting these individuals directly.

The following are my responses to your questions:

1. Courts often rely unwisely on the opinions of mental health professionals who have training and expertise in forensic mental health, or in child psychiatry or psychology in general. Many of these professionals are highly qualified, but have had no experience, training, or exposure to child sexual abuse. They are totally unfamiliar with the nature of this problem, the clinical and research literature currently available, and the methods for validating allegations of sexual abuse. Thus, their opinions are just that--opinion--and often based only on "gut reactions" to the people being evaluated. Particularly in this highly emotionally charged area, such opinions are often neither valid, nor useful to the child victim.

2. In my testimony, I stated that the courts should have lists of qualified experts who could perform court-ordered evaluations in difficult or contested cases, particularly those arising in the context of custody

and visitation decisions. Obviously, not all cases will require evaluation by such highly qualified and trained experts. The qualifications for experts who should interview and evaluate children (and the adults involved as well) in such complex cases should include the following:

> Basic training and expertise in the areas of child development, child psychology, child therapy, children's linguistic development, particularly with children under the age of six years;
>
> Training in the area of child sexual abuse--through participation in seminars, workshops, conferences, and/or supervised clinical work--regarding recognition of child sexual abuse, characteristics of child sexual abuse, pathology of sexual abuse offenders, symptoms and behaviors of victims, and techniques for evaluation of victims, parents, and alleged offenders;
>
> Familiarity with current professional literature on child sexual abuse, including significant books, journal articles, and empirical research findings;
>
> Five years' direct experience in evaluation and treatment of sexual abuse victims;
>
> Experience evaluating at least 25 children under six or seven years of age, and significant family members, in cases of alleged sexual abuse;
>
> Previous qualification as a child sexual abuse expert in court; and
>
> Recognition by peers in the community as an expert through requests for consultation, referrals, invitations to lecture, etc.

3. Clearly there are not enough people with the qualifications listed above to handle the current caseload of child abuse victims. Indeed, for many cases, such extensive qualifications may not be required. The number of sexual abuse victims is enormous, and the numbers of reported cases increasing exponentially. In order to meet the need for professionals with at least minimum requirements to work with child sexual abuse victims, the following possible measures should be implemented:

Establishment of minimum training and experience qualifications for programs and individual evaluators which handle child sexual abuse cases, including child protective, law enforcement, and mental health programs and personnel;

Establishment of training and experience qualifications for specialized clinicans to handle complex child sexual abuse cases as consultants to courts, clinical programs, protective agencies, law enforcement, etc.;

A survey of the sexual abuse evaluation and treatment facilities now in operation, including their staffing, qualifications of personnel, training capabilities, case load, level of collaboration and interdisciplinary training with local protective and law enforcement agencies, in order to assess what is already in place in the way of qualified personnel and training facilities;

The survey should also include information on sources of reimbursement for such facilities, since the evaluation and treatment of sexual abuse cases is often very costly and time consuming, involving lengthy reports, interdisciplinary collaboration, and courtroom testimony, most of which are not reimbursable by third party payors;

Based on the above, identification of a selection of programs which could be models of evaluation, treatment, and training capability;

Funding for the establishment of pilot programs set up to replicate the model programs, employing staff, experts, protocols, etc. from the model programs to assist in this process;

Funding to establish interdisciplinary and interagency collaboration between these model programs and local protective and law enforcement agencies both for training purposes and clinical efficacy;

Reassessment at a specified time of the various pilot programs to determine the efficacy of each in the areas of (1) Evaluation of children and significant adults, (2) Collaboration with law enforcement and protective agencies, (3) Court advisory and participatory functioning, and (4) Training;

> Funding for replication of those pilot programs which are most effective in the above areas through grants, in sufficient numbers to meet the volume of reported sexual abuse cases;
>
> Identification of organizations, educational institutions, and other groups which have sponsored significant conferences, seminars, workshops, etc. for training of clinicians working in the area of sexual abuse evaluation and treatment;
>
> Grants to a selected number of these groups to establish, and fund attendance at, a sufficient array of quality educational events in any particular region to permit supplementary basic and continuing training of necessary personnel (including mental health, law enforcement, legal, and protective agency personnel).

You will notice that I have not listed minimum qualifications for persons who deal with and evaluate sexually abused children in general. I hesitate to do this, because, as an expert in a teaching hospital setting, my area of expertise does not extend to the basic screening of large numbers of children alleged to have been sexually abused, as must be done, for example, by protective agency workers. My personal opinion is that there is a need for more stringent training and experience requirements here too, since many workers who do the initial evaluation of such cases have little or no knowledge about children, child development, child interviewing, and families in general, and their training is limited to a few courses in sexual abuse interviewing, etc.

I hope this information will be useful to the Committee. I appreciate the opportunity to have shared some of my experience and ideas for dealing with a problem of horrifying enormity and consequence.

Sincerely,

Muriel Sugarman, MD

Muriel Sugarman, M.D.

Enclosure

LIST OF OTHER EXPERTS IN THE AREA OF CHILD SEXUAL ABUSE

Lucy Berliner, M.S.W.
Sexual Assault Center
Harborview Medical Center
Seattle, WA

Linda Canfield Blick, L.C.S.W.
The Chesapeake Institute
11141 Georgia Ave., #310
Wheaton, MD 20902

Jon R. Conte, Ph.D.
969 E. 60th Street
Chicago, IL 60637
Los Angeles, CA

David Corwin, M.D.
11 Moraga Way, #3
Orinda, CA 94563

Mary deYoung
2226 Saginaw Road, SE
Grand Rapids, MI 49506

Kathleen Coulborn Faller, M.S.W., Ph.D.
University of Michigan
School of Social Work
1065 Frieze Building
Ann Arbor, MI 48109

Mark Everson, Ph.D.
Department of Psychiatry
CB#7160
University of North Carolina
Chapel Hill, NC 27599-7160

Kee McFarlane, M.S.W.
Children's Institute International
Los Angeles, CA

Frances Sink, Ph.D.
P.O. Box 1726
Brookline, MA 02146

Roland C. Summit, M.D.
Community Consultation Service
Building One-South
Harbor-UCLA Medical Center
1000 West Carson
Torrance, CA 90509

The CHAIRMAN. Thank you very much, Doctor.

I have a number of questions. I am going to try to refrain from asking them all.

Let me ask you, Judge, if I may, what about the idea of establishing a special court to handle child abuse cases? You could have a single judge or more than one judge at whatever the trial court level is, or the family court, whatever the jurisdiction, who has the responsibility to deal with all cases relating to child abuse. Then a judge could develop an expertise.

Judge SCHUDSON. Expertise is needed. However, because there are so many cases taking so many shapes, going into so many court divisions, I do not think that that possibility is a practical one. We have to consider that some of these cases take form in the family court, some in the juvenile court, some in the criminal court, some in two or three at once.

There are so many that if we were to designate special courts, we probably would have to take about two-thirds of our courts and make such a designation. It is——

The CHAIRMAN. What would be wrong with that?

Judge SCHUDSON. The way to reach that—and I think that is a wonderful goal—is to assure a law that requires that all judges hearing such cases are trained. If we can agree on nothing else, it seems to me we could agree on this. Tomorrow in every State legislature in America there should be the introduction of a law that requires that before any judge in any division hears any case in which children must be considered, that judge must have basic training in child development and communication and the laws that have an impact on children.

The CHAIRMAN. Well, as a practical matter, Judge, as you know better than I, there is a substantial backlog of criminal cases. We have trouble getting State legislative bodies—it is not our responsibility; do not let me be presumptuous to say "we have trouble." The State legislators, if the numbers are correct, have been reluctant to provide for the number of judges by comparison that the Federal Government has. Every year we keep adding Federal judges. State legislative bodies have been in many cases reluctant to spend the money to do that.

My worry is that we now have someone a judge, already appointed, show up for two, three, five, seven classes and designate that judge as now being competent to be able to understand all the ramifications to which all of you have spoken. That would be my concern about your suggestion.

Judge SCHUDSON. And you are quite correct. In fact, in my remarks, I refer to the penny-wise, pound-foolish policies that assure the growth of unfairness for children. That is the sad reality. Milwaukee County is one example. According to a recent audit, we have 40 judges doing the work that is there for 186. Consequently, even the time available for training is very, very spare.

So it is not enough to simply provide a week of basic training, if you will. However, in as short a time as 1 week or 2 weeks, we can provide a considerable education that will make a decided difference in the ability and the sensitivity of our judges.

The CHAIRMAN. Thank you.

Why have you not been more successful, the attorney generals of America, the district attorneys? I am not being facetious. It is interesting to me that every time there is a problem—and this is a problem I want to get involved in—State leaders contradict themselves. When the Governors and the State legislators and the District Attorney Association come to Washington for their annual meeting, they first lecture the Congress on how we should reduce the Federal deficit. The first resolution they always pass says that the Federal Government is the cause of our problems because of that deficit, and the deficit must be reduced. And they all sign on, and the press picks it up and says: Governors conference calls for balanced budget, and district attorneys call for balanced budget, et cetera.

Then the next resolution is: You must do more for our States. You must pass laws and give us more money. And in addition to that, you must pass laws to tell us what we should do.

Why is it that there has been such slow progress on this issue in State legislative bodies?

Ms. TOTH. Well, Senator Biden, respectfully, I think I must disagree with you. I think there has been tremendous progress, and perhaps we have not done a good enough job in communicating that progress.

The CHAIRMAN. Why do you need to be here, then?

Ms. TOTH. Because we need to continue to build on what we have done because the problem is not solved yet. We have gotten a good start. We are in a much better position now to know what to do than we were 5 or 10 years ago.

Ten years ago, it was virtually unheard of for a prosecutor's office to have a special unit, to even have special training. There were no manuals, no books, no——

The CHAIRMAN. What kind of receptions do you get when you go to the State legislators and say: We need more money to establish within this prosecutorial system in this State the following offices?

Ms. TOTH. It varies considerably from State to State. Some States are very much more progressive than other States. I think I come from a State that is very progressive in the child abuse area and has pioneered legislation in the area. But our staff attorneys have been working hard on collecting the new State legislation that is coming out in the child abuse area, and daily there are new laws aimed at protecting the rights of children.

And we keep them busy almost full-time doing nothing but trying to keep up with the changes in the laws. So I think we have been more successful than perhaps is the common public perception. But there continues to be this need for training because we have new prosecutors all the time. We have new police officers, new social workers.

The CHAIRMAN. I agree. Judge, you have sat through many, many cases, and you have written eloquently about this. I am confident you will give me an honest answer, but I also want you to give me a very candid answer. How much faith do you have in the psychiatric profession and psychologists who testify before you, honestly, candidly?

Judge SCHUDSON. Probably about the same level of faith as that profession has in the judiciary. [Laughter.]

I suppose that is a mix and I suppose what we see in each other is that there are some who are marvelously trained, understand children as well as the legal process, and provide a tremendous assist to us. By the same token, they see in the judiciary some who are marvelously trained, who listen and understand and make wise decisions.

The **Chairman**. I was not trying to be humorous by asking that, nor pejorative. I think it is an important point, and now I go to you, doctor. My wife works in a psychiatric hospital teaching children, trying to mainstream them. She is a public school teacher and I guess for 5 years taught in a psychiatric hospital. She is now back teaching in the public school system. In one of her ninth grade classes, the average age is 19, and she has told me about sexually and physically abused children. The compositions that are written expounding the abuse that they suffer are incredible.

But the degree of expertise that exists in your profession to competently impact upon those problems makes some of us skeptical. You make assertions which I understand and would have totally agreed with 25 years ago, that we should have all these trained psychologists and psychiatrists make decisions, rather than judges. You suggest in effect, that we do what Ms. Gooch was saying earlier, as I understood it, and not let judges make medical and psychiatric decisions. I find myself in a Catch 22 position, because, quite bluntly, my faith in psychologists and psychiatrists is less than it was years ago.

I spent a lot of time in the family court myself as a defense attorney working for the public defender's office, and I will never forget my first case. I went up against a former judge who was the chief prosecutor, retired, and then came back in his late 60's as a chief prosecutor. We were in the family court on a competency hearing to determine whether or not a person should be tried as an adult and/or as a child in the family court. I said "my psychiatrist is not available to be here," and this savvy old prosecutor and former judge said, "I will stipulate to whatever Mr. Biden says his psychiatrist would say." I was dumfounded. And he said, "As long as I can bring in a psychiatrist, because I can assure you I will find one to say the exact opposite." He was not kidding, he was very serious.

So, I find that there is so little certainty within your profession, that I am reluctant to acknowledge that we somehow would insert psychiatric testimony and input into this process in a way different than it is now inserted into the process, or that we should give it more weight than it currently has in our system. I wonder if you would respond to that.

Dr. **Sugarman**. OK. Well, I think I can respond to that on several levels. I agree with you that many members of my profession and the psychological professions do not have training and expertise in this area, and this is a very new field, there are no recognized treatment programs as such or training programs, and it is very difficult.

A lot of people are ignorant and yet they are asked to evaluate children for the courts.

What I am proposing is that we set up some sort of criteria for training in this area, so that when an expert is consulted, we know that expert has experience in child sexual abuse and in child development, and that that person be appointed by the court.

One of the things that I have faced very often in court is that the expert hired by the court is somebody who does not have these qualifications, and I am consulted by one or the other parent, and as soon as I walk in I am considered biased, even though my primary interest is the welfare of the child, if I am hired or consulted by in the clinic by the father or the mother, I am already considered biased.

What I am saying is if the court has a penal of people that we know have the experience, and we can set up criteria for that, training and experience in this area, in this kind of case, then the court has access to really expert opinion. Judges do not have any idea how to pick an expert in this area.

The CHAIRMAN. Is it not true that if you in fact were hired by someone, and you concluded that the child was not abused, that the court would never know about that. No one would call you to court unless you concurred with the opinion of the party that hired you, is that not correct?

Dr. SUGARMAN. Well, I get asked in both directions. I get asked——

The CHAIRMAN. I understand that. One of the things that I am having trouble with here is this notion that somehow there is expert capability up there, and that we should take that judgment from judges under our legal system and somehow make the repository of that judgment "experts" who will be given an additional weight and/or a different way in which they are chosen to be able to participate in the case. I do not know how that can be done under a constitutional system like we have, and I also do not know that it is particularly wise.

Dr. SUGARMAN. Right.

The CHAIRMAN. Several of you have described cases today where the child was abused and the court concluded that the person was found not guilty. Well, really what you are asking us to consider here is the notion that we no longer accept the judgment of juries and/or judges. What happens in the case where a jury finds, as by the way occurred in some of the cases that have been mentioned today, that there was no sexual abuse? Experts say there was sexual abuse, psychologists say there was sexual abuse. There is a trial, a jury says in a criminal proceeding that no, there was no sexual abuse. What do we do in that case? Is anyone here suggesting that we disregards the jury system and the verdict and suggest that the case is over and there should not be allowed to be custody and visitation flowing both ways? Is anyone making that suggestion?

Dr. SUGARMAN. No, I think there is a big different, though, in the custody and visitation situation, where you do not have a jury——

The CHAIRMAN. I understand. I am just trying to get these a piece at a time so I understand what is going on.

Judge SCHUDSON. Senator, I share your concern and I agree with you and I have been very unenthusiastic about those who suggest that the adversarial system should be compromised so that a judge simply selects his or her favorite expert and acquiesces in that conclusion. I have seen justice produced by that battle of experts when each side has such a determined interest to expose its point of view. I do not think it would be wise to abandon that.

Compatible with that, however, can be a growing awareness that there are some experts who have specialization and whose views should come to be part of the recipe, an ingredient to be considered, so we do already have in place situations where there might be experts called by each side in that adversarial battle.

In addition, under some State codes, the judge also can select a presumably neutral expert to come in and given an additional point of view for the judge or the jury. As we consider whether the expertise is sufficient in psychiatry and psychology to provide this advice, we should distinguish two things: There certainly are certain areas where there are subtle disagreements and where there are concerns that still need more research before we can come to conclusions, and on that we understand there is so much uncertainty that perhaps we cannot reach conclusions.

However, for the most part, we here I think are addressing a very substantial body of settled information that is for the most part unknown to judges and juries, thus until that becomes known, we realize that cases will be tried and judges will be making decisions not with accurate information, but while suffering from the biases of saying things like, well, don't kids fantasize, can't they be brainwashed, were they set up to say this, those are the kind of biases that are not based in the science of child development and communication, and on those points we can educate judges so that they are able to make truer decisions.

The **CHAIRMAN**. I am going to have to take a brief break here. The President is on the telephone. I only interrupt hearings when Presidents call, and I am sure he wants me to be Secretary of State or something. [Laughter.]

If you will let me adjourn for a moment—I am not joking, that is the call—I will be with you in a minute. We will recess for 2 minutes, unless he wants to talk to me for 5 minutes.

[Short recess.]

The **CHAIRMAN**. The committee will come to order.

Thank you for allowing me to interrupt and, to set the record straight and be precise, I misunderstood. It was not the President, it was a former President who was calling me to express that he wished I had been Secretary of State. [Laughter.]

All kidding aside, it was a former President, not the President. Since I am sure the press would ask me afterwards what was the President calling you about, it was not the present President, it was a former President and I will not tell you what he asked me about.

With that, let me go back to the questions. I apologize for being so rapid-fire here, but the hearing has gone longer than I expected. I am more than willing and anxious to stay through this, it is such an important subject. My problem is I am supposed to be in what they call the markup of the State Department authorization bill and there are some important matters there. But we will wait and, if need be, I will go on and break for lunch and if the last panel is willing to come back after lunch, to give me more chance to ask this panel questions, I will do that. That is an awful thing to do to all of you, but, Joe, are you able to do that?

Mr. **DELL'OLIO**. Yes, Mr. Chairman.

The **CHAIRMAN**. OK.

Let me continue, though. Let me raise a concern from what I have observed in town meetings that I have held, and from my wife's experience—and my wife will kill me, knowing that I referred to her experience, because her profession is separate and distinct from mine, but I learn a lot more from her on some of these issues than I do from anyone else.

A view that I have, and one that I know she shares—and it may be different from State to State—is that the foster care program in America is a travesty in some areas. I would like to ask you if any of you are willing to respond, if you in fact have any basis upon which to make a judgment other than your instinct. Is there more, as much or less sexual and physical abuse in the foster care program? I know each State terms it differently, but I am referring to those systems where the State decides to take from the family, from a guardian, from the custodial parent the right to have the child, for whatever reasons, and put that child in a foster home. Is there any evidence that there is more or less abuse of children in that circumstance than in the home? Obviously, you cannot speak to individual cases, but generally, would anyone like to speak to that?

Yes, Judge?

Judge **SCHUDSON**. Senator, I share your perspective in another important way, as much of my experience and many of my comments derive from the fact that my wife is a psychotherapist and, as you have seen——

The **CHAIRMAN**. You are in deep trouble.

Judge **SCHUDSON**. Yes, indeed.

The **CHAIRMAN**. You are in deep trouble, based on what you have said. [Laughter.]

Judge **SCHUDSON**. Think of the troubles for our kids.

The **CHAIRMAN**. No, I did not mean that, I meant based on your comment about how you viewed psychiatry. I guess I did say psychiatrist and psychologist, and so you can technically argue that you did not refer to her profession.

Judge **SCHUDSON**. No, I thought I was being kind to those professions, but perhaps not.

In any vent, as a juvenile court judge, I had on a daily basis to deal with the possibility of foster placements and the possibility of taking a child from a home and placing the child in the home, thus it was incumbent upon me to get an understanding of the quality and the quantity of the foster care placements in the Milwaukee area.

I found, as everyone might expect, that there are many foster parents who are superb, who give of themselves and make great sacrifices and do exactly what we would hope. At the same time, although it is impossible to measure statistically whether this is greater than the population at large, we have the impression, to say the least, that there are some pedophiles who do put themselves in positions that enable them to have access to children, and one such position is as a foster care parent, thus it has come as little surprise to those in the field to see a growing number of criminal prosecutions of persons who committed the abuse of foster children in their own foster homes.

What I see most prevalent in Wisconsin and throughout the country is a serious lack of foster homes, and we see economic retrenchment reducing the economic and insurance support to foster parents. As a result, one of the greatest tragedies a juvenile court judge often faces is that, after all of the hearings, after the completion of the trial and after the virtual certainty that a child must be removed from the parental home for the child's protection, there is no place to put the child and the child then either stays in the home where the abuse occurs or languishes in some kind of center which is most inappropriate or goes perhaps to a foster home that is marginal, that has only been allowed to be a foster home because of the lack of proper ones.

The CHAIRMAN. Ms. Toth, let me ask you, are there any statistics that you are aware about the number of civil or criminal cases that have been filed alleging child abuse from the parent, as opposed to those cases alleging child abuse from the foster parent?

Ms. TOTH. On a national level, no, I do not believe so.

The CHAIRMAN. Has any State done it, to the best of your knowledge?

Ms. TOTH. The only statistics I am aware of like that, Mr. Chairman, are individual communities who have done their own studies. Frankly, I do not know what the trend is. We are seeing more and more referrals of abuse in those care, foster care and other kinds of situations.

The CHAIRMAN. I have a much less ambitious concern than attempting to determine what the trend is. If you can provide studies or statistics on this question for the record, if they are available through your organization, it would be helpful to this committee.

Ms. TOTH. I will see what we have and do that.

The CHAIRMAN. Judge, I believe you argued in your book that children are reluctant to answer questions of an unfamiliar person in court, including the prosecutor. As a result, in some cases State courts have allowed more familiar persons such as the child advocate, which was referred to earlier by several people, to question children instead of a lawyer.

Unfortunately, as you know, there have been mixed reactions to this practice in the States. What are the advantages of allowing a person other than lawyers to ask questions, to be the interpreter, if you will?

Judge SCHUDSON. The advantage really parallels the advantage for any witness who is allowed to speak through an interpreter. Sometimes the very same words are spoken, sometimes the language for a child is exactly the same. Just the change in the personage or even sometimes speaking it through a puppet or through a doll breaks down the atmosphere that has prevented testimony.

I have had situations where a just conviction was reached precisely because the very same words were spoken by a different person or even by a puppet, just with that immediate change in the atmosphere, the child's attention was gained, the child was able to respond, the jury had a chance to hear and justice came about.

The CHAIRMAN. How do you feel about the suggestion that was made by the doctor that that interpreter, if you will, be allowed not only to interpret the question, but to interpret the answer to the court?

Judge SCHUDSON. Interpretation comes into a different area, where, in addition to hearing testimony, there are many times when juries indeed should be allowed to hear experts explain the nature of child communication. For example——

The CHAIRMAN. Excuse me. Let me be very specific, because I think it was a very specific suggestion. It is one thing to have an advocate stand there and ask questions for the prosecutor, through the use of a puppet, or other means. The advocate is presumably an expert on how to communicate to the child, unlike the prosecutor. I personally see no constitutional limitation on that form of questioning and I suspect that although it may have mixed results, it could have some very positive results.

There was a second part of the suggestion, however, and that was to have the advocate interpret the answer the child gives, as a matter of fact, not a matter of conjecture by which the advocate can then be cross-examined. Do you feel that it is appropriate for an advocate to tell the judge and jury what the child meant to say?

Judge SCHUDSON. As a matter of fact, that can be allowed when there is a person who is in a position to explain to a jury that a particular word used by a child in the child's habit is a word used to describe something, such as——

The CHAIRMAN. Then that person is able to be cross-examined under our system.

Judge SCHUDSON. Yes, of course.

The CHAIRMAN. Well, you do not cross-examine a prosecutor. This is the person taking the place of the prosecutor. With all due respect, Judge, you are not answering my question.

Judge SCHUDSON. No, it would not be the prosecutor who is being replaced, it would be the interpreter who is there with the child, who in effect becomes another witness. For example——

The CHAIRMAN. Well, let me ask the question a different way, then. There are several roles that could be interposed between a prosecutor and a defense attorney or a defense attorney and the child. One is that you have someone who is there literally to comfort, the child sits on the lap of Aunt Tillie or grandma or the next door neighbor who he or she loves and feels comfortable with, and the child answers the question. Grandma does not answer the question, Aunt Tillie does not answer the question, nor does Aunt Tillie or grandma promote an answer from the child. Correct?

Judge SCHUDSON. Correct.

The CHAIRMAN. There is a second kind of thing we are talking about, as I understand it, and that is to have a trained clinician, a trained expert on communication with children in circumstances such as these, which are very traumatic for the child, who stands there in front of the witness box or wherever the child is seated, and asks, as the prosecutor would have asked or as the judge would have asked or in place of the defense attorney asking, and says, "Now, Mary, let me show you this puppet"—I am not being facetious, I am being very serious—"and here is what the puppet has to say, and the puppet says, Mary, did daddy ever touch you in places that you felt that were"—and then describe the places, whatever it was—"did daddy ever do these things?"

Now, that is in place of the prosecutor asking that question, to establish their case, or if it is for the defense, in place of the defense attorney asking the question. Now, I see no problem with that, that question being asked now. But where I raise the question—and, doctor, correct me if I am wrong—was with the doctor's suggestion that the expert who is eliciting the truth from a child could then turn to the judge or jury and say, "what the child means to say is daddy did do it," or "mommy did do it." Doctor, aren't you suggesting that this practice should be allowed under certain circumstances?

Dr. SUGARMAN. What I particularly was referring to was what Judge Schudson was saying, that certain words used by the child, not mommy and daddy, but certain words for anatomical body parts, for instance, might need to be interpreted for the jury, because they would not be the correct names, or the syntax that the child might use might be difficult to understand.

The CHAIRMAN. Would the interpreter of what the child says then be available for cross-examination under oath?

Judge SCHUDSON. Yes, in virtually all instance the litigator and the expert witness should be distinct. There could be a rare, very rare instance perhaps where someone is an interpreter and then is called to the witness stand so he or she will be subjected to cross-examination, thus to test the validity of that method of——

The CHAIRMAN. You say that is a rare circumstance?

Judge SCHUDSON. Very rare, but there are——

The CHAIRMAN. It seems to me it should be totally available to the defense, that that would be the case.

Judge SCHUDSON. No, I think the whole happenstance as you have described it——

The CHAIRMAN. Oh, the happenstance is rare, I see. OK.

Judge SCHUDSON. When it occurs, that cross-examination should be possible.

The CHAIRMAN. All right, I understand now much better.

Judge, would Federal legislation help to raise the visibility of need for change in rule and procedure in your mind in State courts?

Judge SCHUDSON. Let me address that in two ways: In the first place, I think there is an extremely limited role that the Federal Government can play here, and where I see the deficiencies across the country is not so much in the nature of the laws. I feel that good prosecutors and good judges are able to achieve sensitivity and fairness for the most part with the legal tools we now have, if we use them properly.

Most of what we describe and most of what we recommend can take place without legislative change and without a constitutional amendment. You do not need a new law to have the sensitivity to put a kind on a lap.

On the other hand, I think there is a very significant role for the Federal Government here, and I think that goes back to the question you asked Ms. Toth earlier. After all, some of what we hear in the States when we go to our legislators, "Go to Washington, we can't afford it."

As we learn and as we study the history of the development of the victim-witness advocacy programs and as we witness the growing sensitivity to battered women, rape victims and now children, we find invariably that the key initiatives across the country came about in part because there was Federal initiative, Federal seed money, Federal incentives provided through LEAA some years ago leading to Ms. Toth's activities in part, leading to my activities in part as early as 1975.

We now find, however, that States are spending very little money for anything related to human services and criminal justice. They do often enact very good laws, but they do not enact the bucks to back them up.

For example, every State in very short order has enacted a law that requires the reporting of suspected child abuse. It is a wonderful development, it has swept the Nation in just a few years. Almost none of those States, however, enacted laws that put personnel in place to accomplish that, and so now, if I may, we have an incredible and tragic irony.

If you look at Wisconsin, for example, Wisconsin recently abandoned all prevention programs. The Milwaukee County Department of Social Services terminated all child abuse prevention programs so that it could free up its personnel in that area to respond to the new law that required investigation of suspected child abuse within 24 hours, thus Wisconsin enacted the good law, did not allocate a single dollar to implement it, and then produced that counterproductive result by drawing the personnel from prevention to crisis intervention, and I think that is an experience we see across the country and it is there where I think the Federal Government could, with its umbrella understanding, its total perspective, say let us bring about the initiatives that stimulates——

The CHAIRMAN. With its money. The polite suggestion you are making is that the Federal Government should help spur reform in the States with its money, correct?

Judge SCHUDSON. Yes, in part.

The CHAIRMAN. I agree with you. In the specific case you gave, what you are really saying is what is missing is the money.

Judge SCHUDSON. Well, as so often, the Federal Government can enact that carrot and stick approach and can say certain things will continue to be available to you if you do this, and with that the Federal Government could educate the States into recognizing that the heritage of progressive government is not always will the budget be balanced by December 31, but what do we do today that creates fairness for generations to come, and with that we enact programs and spend dollars that not only are humane, but are also cost-effective.

The CHAIRMAN. I do not disagree, but I think we ought to cut through it all and get down to what you are saying here. What you all are saying here is States are wonderful, they are great, we love them, they do great things, but, by the way, give us some more money to prod them along.

Anybody who suggests the Federal Government should not be giving money to deal with this issue to the States, raise their hand.

[No response.]

Thank you very much. Now, doctor, let me ask you a question. In your testimony, you state that courts should allow any contact between the child and an alleged perpetrator until the investigation is completed. At the same time, unless I misunderstood your written statement, you state that the courts should protect the child's on-going relationship with the alleged perpetrator as much as possible.

Now, quite frankly, I am not sure how to reconcile both of those statements. I am sure there is a way, I am not being facetious, but I just do not understand it. What specific measures should the courts take to protect the relationship between the child and the defendant, while still not allowing any contact until the investigation is completed?

Dr. SUGARMAN. Well, in some instances the contact may be in the evaluation itself, where the evaluator may see the alleged perpetrator and the child together in a controlled and highly supervised situation, so that there is no opportunity for intimidating the child or trying to pressure the child to recant.

In other instances—and I was just reading a paper about this on the plane down here—some evaluators feel that it is better to stop visitation and contact with the alleged perpetrator for that brief period of time while the child is being evaluated and then institute these controlled and highly supervised contacts.

Even though it may be difficult for the relationship in the short run to have that period of no contact, in the long run if it prevents the possibility of the child being pressured to recant, it clarifies the situation much more quickly and, if there is no foundation for the allegation, may get them together again a lot faster.

The CHAIRMAN. In your experience, when there is a criminal prosecution pending or underway, what is the willingness of the alleged abuser to put themselves in that position, knowing very well that whatever occurs may very well be used against him in a criminal prosecution?

Dr. SUGARMAN. To put themselves in what position?

The CHAIRMAN. In the position you stated at the outset, where there is a qualified observer who is in fact dealing with both the parent and the child in the same environment at the same time, I assume for the purpose of attempting to get to the bottom of the issue and the problem.

Dr. SUGARMAN. Not necessarily. I mean that may be a voluntary thing on the part of the alleged perpetrator, but what I was talking about was giving the child an opportunity for some contact with the alleged perpetrator.

The CHAIRMAN. So, just as an observer, not as a——

Dr. SUGARMAN. Observing the child's behavior, right.

The CHAIRMAN. I see. I see.

I have three more questions for you, and in the interest of time I will submit them in writing, if you would be willing to respond to them. They relate to the kind of training for child advocates you think they need and are there enough qualified people and what we should be doing about that and what we can do to help.

I would like to go to you, Ms. Gooch, if I may, and ask a few questions. As an advocate for sexually abused children, you have stressed the importance of placing the child victim in a neutral environment, pending the resolution of custody and abuse matters, with equal access by both parents, is that correct?

Ms. GOOCH. For the cases that are embittered right now, it seems that is the only immediate way to have this done. I do not think that is the end all, I think there must be much more done than that. But in terms of what is going on across the country to avoid the ramifications of the cases that we are seeing, I do not like the idea from the perspective of a child, I think they have been traumatized enough, but the way the system is working right now, I do not know if there is another solution.

The CHAIRMAN. I am not being critical, I want to understand——

Ms. GOOCH. I understand. I think that——

The CHAIRMAN. Does the judge determine what is a neutral environment or——

Ms. GOOCH. Hopefully, yes. What is going on, if a child is making an allegation of child sexual abuse, right now there are not multidisciplinary teams to investigate that in most States. We do not even have that yet. At the present time, because this is being misconstrued as a custody matter, because is not a finding of child sexual abuse prior to adversarial procedures, it is the only immediate resolution that I can see to stop these embittered "custody battles" and to substantiate that a crime has been committed.

The CHAIRMAN. There is no doubt in my mind that sexual as well as other forms of physical abuse of children exists, is serious, and is widespread. I suspect it—particularly the physical abuse side—is spreading even more widely as a consequence of the drug epidemic that exists out there. Drug use spauns irresponsibility on the part of custodial parents, literally effecting the psyche of the drug abuser and forcing or allowing them to do that they would not otherwise do. So I applaud you. You hear that phrase often from us up here, but we applaud you for what you are doing. It is not said lightly by me, nor has it been by my colleagues.

As you all know, we are going to have a very, very slippery slope on which to move along here. Notwithstanding the fact that it is real and it is significant and it exists in a large number of cases, I will ask you all, from your first-hand experience in your respective responsibilities, how often is the allegation raised by a parent, not the child, in a custodial circumstance where the child denies, if asked, whether or not such abuse is taking place? I know you do not have any particular number.

For example, I can think of two cases in my own experience as a lawyer, one as a lawyer and one as a Senator who was asked to get involved in a matter, where in a very bitter custody case, the wife alleged that the husband physically abused, not sexually abused, the children. When all the children were asked, they said it did not occur. The court concluded that it did not occur. I wonder how many times a false allegation is made by the noncustodial parent seeking custody of the child.

Ms. GOOCH. I would like to address that, Senator Biden, if I may. I do not know of the case you are speaking about, but the cases that I am speaking about have definitive evidence of——

The CHAIRMAN. No, I am not saying—let me start off, let me say it again so there is no misunderstanding. I am holding this hearing because I think there is overwhelming evidence that there are a phenomenal number of cases where children are the victim of physical and sexual abuse, and I might add that is not the only abuse that exists. There is nonphysical abuse, that can be almost as damaging, in some cases as damaging. Abuse is real, it is genuine, and it exists in probably 98 percent, if the DA study is correct or the bar study is correct, of the time that is alleged, where the allegation is generated by the parent but later corroborated by the child.

I am asking you a separate question. The question I am asking is how often, in your broad range of experience, have there been allegations brought by the noncustodial parent that have not been alleged as well by the child or corroborated by the child? How often is it used as a ploy? How often, if at all, is it used as a tool?

Dr. SUGARMAN. Well, the Bar Association study indicates 14 percent, but I am not sure how accurate the figures are, because only about 50 of the cases actually gave a reason for what they thought was an unfounded allegation.

I can see in your question, though, a scenario in which a parent might say that their children said daddy did such and such, and the children, when asked, might deny it for several reasons, one of which might be that they have been intimidated to retract and another might be that they were afraid something bad was going to happen to daddy.

The CHAIRMAN. None of you believe that a father or a mother just makes this up ever?

Dr. SUGARMAN. No, I am not saying that, I just said that in 14 percent of cases in the Bar Association study, it was felt that there was a deliberately false allegation, which means that in 86 percent——

The CHAIRMAN. But do you believe that, that is what I am asking you.

Dr. SUGARMAN. I do believe that. I have had——

The CHAIRMAN. That is all I am asking.

Dr. SUGARMAN. I have had cases like that. But in many cases, the child does not necessarily fail to corroborate what the mother says, the child just does not give the story very convincingly.

Judge SCHUDSON. In part, I think that is why we all hesitate to give an answer, we have to consider at what level, was there an assertion from a parent, did it get screened by a prosecutor, did it come into court, was it tested. We all realize that certainly there are false allegations, but I think particularly we are all reluctant to perhaps close our portion here on a theme of false allegation, when we know so much of your concern and ours——

The CHAIRMAN. All I am looking for is the same thing you are looking for, Judge—the truth. Whether you close on it or open on it, whether it comes in the middle, beginning or end. Just like a judge, I like direct answers to direct questions.

Judge SCHUDSON. I think the answer is occasionally.

The CHAIRMAN. "Occasionally." That is very helpful.

Ms. TOTH. Senator Biden, I did review hundreds of cases as a prosecutor and I saw in all of the time that I was a prosecutor probably only two or three situations that were like that. I think——

The CHAIRMAN. That is a different situation. As a prosecutor you have gotten to the point at least where there has been an allegation that has been brought for purposes of prosecution, as opposed to an allegation that is brought for the purposes of weighing on the judge's mind when the judge is making a judgment about custody, right?

Ms. TOTH. That is correct. That is correct. We were presented with a police investigation and asked to make a determination about the filing of charges. In my experience, those cases, if the investigation is good and if the prosecutor, for instance, has the skills to talk with the child, it is fairly easy to tell when the child does not have the information that the child would have if this in fact actually happened. Yes, some parents I think do for malicious reasons put their children up to this, but it is very rare and the study that has been cited to you might be worthy of review, because they found that those kinds of situations were very, very rare.

The CHAIRMAN. Well, I will yield to my colleague now, to end this questioning of this panel. But let me say to you that I am looking for hard data to the extent that it exists, to confirm what could only at this point be characterized as my prejudice, to be honest about it, which is something not a lot of people like to be about this subject, from my end of this.

I think it is extraordinary that a 2, 3, 4, 10, 12, 13, 15, 17-year-old child would be willing to come and testify against a mother or a father. It is asking probably the single most difficult thing for a child to do. So, I think that when in fact that occurs, the overwhelming likelihood is that they are telling the truth. Because all of us, no matter how much daddy or mommy hates us, wants daddy or mommy to love us. I think that is universal, and I am not a psychiatrist, obviously, nor a psychologist.

So, I think it is incredibly difficult for a child to step forward to make that kind of judgment, to say I will confront a parent—to look at daddy or I will even do it behind a screen. Even if daddy is not here or mommy is not here, it is incredibly difficult for a child to tell somebody else what they did to them. A child often feels that as bad as what their parents did to them, they still love them so much they do not want to leave them.

It is a hard choice for a 4, 5, 6-year-old child to make. So, I have no doubt about the fact that it is incredibly difficult and the child has many reasons not to tell what mommy or daddy did than to tell.

What I am trying to do is to separate the wheat from the chaff here. The best way for us to make the case in my humble opinion, to the rest of America and to my colleagues, that we must do something about it, is acknowledge what we do not know as well as what we do, and acknowledge that there are occasions, if they exist, where accusations are used maliciously.

I handled a lot of custody cases, not many of these, but I have hardly ever seen circumstances where parents thought of their children before they thought of themselves. The overwhelming instinct, by the time they get to that courtroom, is to be selfish. I am not talking about child abuse cases, here.

I was thinking on the way down about King Solomon's solution. In one of the first recorded custody cases, he made a judgment to award custody to the mother who said give my baby to the interloper, because Solomon, in his wisdom, concluded that the one who loved the child the most was likely to be the real parent. When Solomon said I will cut him in half and give you each half, the real mother said give it to the other one, because she loved the child more than she loved her right to have the child.

I do not know how many hours I sat in the family court and watched parents do things to one another in custody cases that could do nothing but damage the child. Again, these were not physical abuse cases, and so I am reluctant to even mention it, because it confuses the issue somewhat. Nonetheless, I think we have to somehow figure out, through whatever data we can find, when in fact and to what extent it occurs, that parents use child abuse allegations as a device. Then we can make the case to deal with the tens of thousands of children who are abused by their natural parents out there right now, on whose behalf you all came to testify today.

That is the reason for my questions. But as you know from your experience, Judge, witnesses, prosecutors, and defense attorneys do what you did all the time. You want to second-guess the reason for my question and you want to make sure that you get across the point you want gotten across.

I just think it is important that we have some access to data that indicates whether or not parents use this as a tool. If it is clear that it does not happen very often and the data from your colleagues, doctor, from your colleagues, Judge, from your colleagues who are involved in this, Ms. Gooch, and from your colleagues who are prosecutors, can establish that it is rare, then it makes the case stronger that we should take actions that in fact are different than, in many cases, what the common law has been, what our practice has been, and what we should be doing in the minds of many. I am afraid a lot of people out there think, well, it is just a tool sometimes, and we have got to figure out what the hard data is on that kind of thing.

In your experience as a Judge, how many times have you had a case in a custody matter that involved no allegations of maltreatment of children, physical, that you walked out of your courtroom and went home to your wife and said, "You know, I just met two of the most generous parents today, they really came to my court and the first concern they had was for their child, there was no doubt in my mind they both thought that." How often has that happened, Judge?

Judge SCHUDSON. Senator, I think your sense is correct, and just in one sentence I would answer that I think your sense is correct and much of the research and data that you would seek is contained in Chapters 1 and 3. However, most of the research has taken place in the form of checking to see whether false allegations have come from children, and you have cast it differently, whether the false allegations have come from adults.

The CHAIRMAN. Yes.

Judge SCHUDSON. On that, there is far more limited research and that is part of the difficulty in responding.

The CHAIRMAN. I thank you all.

I am going to turn the gavel over to my colleague, Senator Specter. The remainder of the hearing will be reconvened at 2 o'clock, giving those who are on those two panels a chance to quickly go get something to eat, if you wish. I apologize, but I suspect you would not want me to try to short-circuit the testimony this morning and the questioning in order to deal with the issue. I hope you would not, or I would begin to judge your credibility.

So, with that, there will be no panel called beyond this one until 2 o'clock, and, Senator Specter, this panel is yours as long as you want them up to 2 o'clock.

Senator SPECTER. [Presiding] Thank you very much, Mr. Chairman.

Before Senator Biden leaves, I compliment him on a most extraordinary hearing. I had to leave for part of it to go to the Pentagon in a controversy on the V–22 plane, in which Senator Biden has an interest as well, so I returned about 30 minutes ago and found the questions and responses very enlightening on a very difficult and very sensitive subject.

I shall not go over the issues which Senator Biden has developed, because I think they have been developed in a comprehensive way, but there are a few questions which I would like to direct to you, Judge Schudson, and they relate to the issue of the court's power to hold in contempt and to incarcerate.

I believe you were present earlier this morning when we had a dialogue with Senator Reid and Congressman DeWine about the contempt power. In the literature, the long sentence that I have noted has been one for 5 years for an unorganized crime figure who refused to testify before a Federal grand jury, and no other sentence as long as the 20 months, which Dr. Morgan has now served. My question to you, Judge Schudson, is do you know of any sentence for contempt which is as long as Dr. Morgan's?

Judge SCHUDSON. Under these circumstances, no, I do not.

Senator SPECTER. Under any circumstance

Judge SCHUDSON. I am not aware of any specific cases.

Senator SPECTER. What is the longest sentence that you know of on a contempt citation?

Judge SCHUDSON. Of this nature, it is the one that has been described in *Dr. Morgan's* case.

Senator SPECTER. Aside from *Dr. Morgan's* case, what is the longest sentence you heard of in a contempt citation?

Judge SCHUDSON. I am not sure, but I have heard of others in the range of half a year to a year.

Senator SPECTER. And in those cases, were the sentences withdrawn or the contempt sentence ended, if you know, because of compliance or because the court concluded that there would not be compliance?

Judge SCHUDSON. I am not aware of any where the contempt citation was terminated because the judge concluded there would not be compliance. I am aware of cases in which the termination came about by virtue of compliance or some relitigation that led to resolution.

Senator SPECTER. Have you imposed a contempt citation of incarceration?

Judge **Schudson**. Not of that nature, no, not in a case under those circumstances. I have not had occasion to.

Senator **Specter**. Have you imposed incarceration on a contempt citation under any kind of a circumstance?

Judge **Schudson**. No.

Senator **Specter**. Judge Schudson, there has been speculation and there has been comment—well, let me move aside from the *Morgan* case and let me ask you a general question. Do you think that there is any realistic concern—well, I shall not pursue that question either. Let me approach it from another dimension.

I am concerned about the sensitivity of this issue, although this committee has a full right to make the inquiry which we are pursuing and we have a full right to make commentary or question matters in the court, nobody has to listen to us but we have our own function. There are very serious legislative interests here on constitutional issues that we may pursue. Legislation has been introduced in the House to limit sentence on a contempt citation to 18 months, but I am very sensitive about the pending case, even though, as I said before, I think it is past the line where there is an appropriate collateral consideration by a legislative committee.

What is your thought about legislation which is pending in the House. I doubt that you have had a chance to look at it, but I can summarize it for you very briefly. It sets a limit of 18 months on the period of incarceration for a contempt citation by analogy to the length of time that Federal grand juries are convened. Would you care to express an opinion on the public policy value of such a legislative limitation?

Judge **Schudson**. Yes, and I have mixed feelings. On the one hand, I think there certainly is a strong argument that can be made for bringing about a limit on the length of incarceration for contempt somewhere along the lines that we would find under other circumstances, whether it is the 18-month, to make it consistent with the Federal grand jury contempt or something like that. I understand that argument. There is some merit to it.

But I think the issue is far more difficult than that and I think to really test ourselves and test the legislature on that point, we have to cast the issue this way: We have to say if we have a case in a court and, let us say, for example, the woman prevails and gains the agreement of the judge and gains the order she desired so that the judge says to the man in court, "You lose, therefore you will produce that child immediately for the mother," and the man says, "No, Judge, I won't," and the judge says, "You're in contempt, bailiffs, take him away," and take him away how long, what would the mother want at that point? The mother would say, "Judge, keep him in jail until I get my baby back."

If, under those circumstances, there is a limit of 6 months or 12 or 18 months, that man might say, "Six months, Judge, I can handle that; 12 months, I can handle that, it is worth it." So, I think the problem is so vexing when we consider that the contempt authority of the court is there to assure the ability to enforce good and wise orders. Tragically, there will be times when it is used for the enforcement of what we may all believe to be an unwise order. If, however, we circumscribe that time, then we are in trouble.

Senator SPECTER. Judge Schudson, the mother might want it and we could understand that, but the question is at what point are you past the point of no return on an order to enforce compliance. There is a doctrine of law which says that if the judge who imposes the contempt citation concludes that the contempt citation is not reasonably calculated to get compliance with the order, that it is inappropriate to continue the period of incarceration. Is there any point where you would say that a judge should not have the authority to keep somebody in custody beyond a given point?

Judge SCHUDSON. And here it becomes all the more difficult when we listen to one more voice. We understand that contempt authority in this instance is used to bring about compliance, but it is used in one other way at the same time that we do not find in the grand jury situation. The contempt authority and enforcement there are used to produce safety for the child.

In my last example, we heard from the man and the women, but now let us hear from the infant who cannot speak, from the toddler who is hidden away somewhere, and that toddler would say, "Judge, you've just concluded that I am supposed to go from dad to mom, because dad's abusing me, and now you are saying you will only keep me safe from dad for 18 months, I will be 3 years old, I will be 4, that is not enough, Judge, please, for my protection, assure that he stays in jail until he produces me so I can go home to mom." It is that complicated.

Senator SPECTER. Judge Schudson, you do not have the case where the alleged abusive parent is in custody, you have a hypothetical case I am giving you where you have the parent in custody who has refused to produce the child because it is parent's judgment that to produce and subject a visitation will result in sexual abuse.

Judge SCHUDSON. Well, that may be the point of view of some of those involved in the case. But what I am trying to express is we have no guarantee of that, and indeed, for the most part, let us hope that judges usually do make the wise decisions.

Senator SPECTER. Wait a minute, Judge. There is no allegation that the parent under my hypothetical who refuses, who is in jail, has control of the child, and that to be out of jail subjects the child to further abuse. There is no allegation of that.

The issue is whether further incarceration will persuade the parent who has custody to produce the child.

Judge SCHUDSON. I understand that, and what I am saying is that if we are to circumscribe the extent of the court's authority to enforce the order, that is the same authority that would also then be circumscribed under all of the other cases I have just described.

Senator SPECTER. Maybe yes and maybe no. Do you have a judgment as to any limit on the power of the court to keep someone in jail under the circumstances of my hypothetical?

Judge SCHUDSON. No.

Senator SPECTER. How about the issue of a jury trial on the facts of contempt; so that it is not within the power of the judge himself or herself who is involved in the case and who has the enforcement of his own or her own authority, the order involved?

Judge SCHUDSON. That is an area of law that has often been considered in both the Federal and the State courts, and we find different formulations. What we do find, though, is relative consensus on this. It seems to be the agreement that there always must be preserved for the trial judge himself or herself the opportunity to use what is called summary contempt and to insure the immediate enforcement of an order.

Whether, in addition to that, for a longer term incarceration or for other long-term penalties there should be a trial is a question that some States have answered yes, and they have said specifically that must go before another judge.

Senator SPECTER. I am asking you the question, Judge, if you care to answer.

Judge SCHUDSON. I think that there must be summary contempt power and that to address the immediate problem, that same trial judge should have the authority to gain enforcement of the order. For longer-term incarceration or for some kind of indefinite incarceration, I think there is considerable merit to the proposal that that should take place in a different forum, before a different judge.

Senator SPECTER. And a jury?

Judge SCHUDSON. And possibly with a jury.

Senator SPECTER. All right, thank you very much. It is 1:12. You have been very patient. You have sat for a long period of time and we thank you very much. As Senator Biden has said, the hearing will reconvene at 2 o'clock.

Thank you all very much.

[Whereupon, at 1:12 p.m., the committee recessed, to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Let me begin by apologizing. There has been a mild problem and the problem relates to my responsibilities as chairman of this committee. I had to be dealing in a much longer timeframe than I thought on the President's proposed crime package.

There were things that had to be done, and I apologize that it went so long. Let me also say that prior to setting the hearing, we had some agreement that other Senators would be able to be here. In the meantime, the Senate's schedule on the floor, particularly the FSX fight and a few other things, including the markup of legislation, prevented them from being able to be here.

So, although it was never intended for me to do the whole hearing, I am delighted to be able to, but very sorry that you have had to be inconvenienced as much as you have.

Our next panel is made up of two witnesses, Betty Stewart, Associate Commissioner of Children's Bureau, at the Department of Health and Human Services; and Dr. Jane Burnley, Director of the Office for Victims of Crime, Office of Justice Programs, at the Department of Justice.

Welcome, ladies. I appreciate it very much your being here, and please go forward with your testimony. To the extent you can, keep it to 5 minutes. Whomever would like to start, go ahead. We will let the government work this problem out.

Ms. STEWART. Justice will go first.

The CHAIRMAN. All right.

A PANEL CONSISTING OF: JANE N. BURNLEY, DIRECTOR, OFFICE FOR VICTIMS OF CRIME, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE; AND BETTY STEWART, ASSOCIATE COMMISSIONER, CHILDREN'S BUREAU, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ms. BURNLEY. Good afternoon, Senator. It is a pleasure to be here before you. I am Jane Burnley. I direct the Office for Victims of Crime in the Office of Justice Programs. I have worked in that capacity since April of 1987.

The Office for Victims of Crime was established in 1983 to serve as the Federal focal point for victims 'issues. We have responsibility for implementing the President's Task Force on Victims of Crime and the recommendations of the Attorney General's Task Force on Family Violence.

The Family Violence Task Force, I am sure you are aware of it—the report was issued in 1984—recommended that family violence, including the various forms of serious child abuse, especially child sexual abuse, be recognized and responded to as criminal activity. It called for the legal response to family violence and child abuse to be guided primarily by the nature of the act, rather than the relationship between the victim and the abuser.

The Task Force understood that steps had to be taken to reform the process utilized to investigate and prosecute these types of case and, accordingly, made several recommendations.

I am pleased to tell you that considerable progress has been made by Federal, State and local governments in implementing these recommendations. For example, at last count, 44 States have made some type of provision for protecting children while they testify in court, for example, the use of videotapes and closed-circuit television. Other legislative developments passed by States to protect child witnesses include amending child competency requirements, 31 States have already moved to do this, amending hearsay admissibility requirements, 29 States have moved to do this, requiring counselors or guardians ad litem for children in proceedings, 31 States do this, extending the statute of limitations for child offenses, 29 States now permit this, and requiring speedy trials for offenses against children, 21 States now provide for this.

A major benchmark in implementing the President's Task Force was enactment of the Victims of Crime Act and, as you know, we are not a program which is related to our deficit problem, because all of our funding comes from Federal criminal fines, penalties, bond forfeitures, et cetera.

At this point in this fiscal, without going into detail about the fund and the way it operates, we will administer about $93.5 million in grant programs.

One of our major grant areas is victim assistance. Those funds augment State support for a variety of community-based services which include rape crisis programs, child abuse treatment programs, battered women shelters, victim witness programs, and other service for victims of violent crime. Child abuse is a priority of the victim assistance program.

A large percentage of victim assistance grant programs do provide services for child abuse victims. In 1986, almost $10 million supported child serving programs. All ages of children are served in these various programs. They operate in a variety of settings, including hospitals, nonprofit agencies, prosecutors' offices, judicial districts.

Crime victims compensation is awarded to innocent victims of all ages. Victims of crime, including child sexual abuse victims, have since this program got started, have increased their share of victim compensation each year. In fiscal year 1986, more than 4,000 child victims received compensation awards of over $6 million. That has increased over the next 2 years, so that in fiscal year 1988, 17,000 child victims received compensation totalling more than $15 million.

Much of the compensation which is awarded for child victims supports mental health treatment, and I am sure you know that in the victim compensation program, mental health services are a requirement for States' eligibility in that program.

The crime victims fund, I am pleased to tell you, has increased significantly this year. In 1988, it increased over $16 million in collections. We expect this year to collect more than $125 million, which is our legislative cap, and President Bush's budget request for fiscal year 1990 calls for full funding in that program so that we would expect to see a further expansion in victim services, including child victim services.

A major area of interest of our activity is services for Native American programs, in particular child abuse victims, where there is Federal jurisdiction for the crime in Indian country. We became involved in a very large case in 1987 on the Hopi Reservation. After a successful prosecution in that case, it became aware that there were major mental health needs for over 100 child sexual abuse victims in that case. We assisted in arranging for two therapists to provide emergency treatment for those victims. That marked the first time that the crime victims fund was used to support mental health treatment for victims of crime in Indian country.

Since then, we have been involved in nine multiple-victim child molestation cases, where there was Federal jurisdiction. There were more than 900 child victims in these cases, allegedly in these cases. They are in various stages of prosecution at this time.

Large numbers of child victims in these cases have received no treatment at all, even months after the disclosure and even after successful prosecution.

In response to these cases, we decided that there was a tremendous need for the development of victim assistance programs on Indian reservations, and we have made that the highest priority for the portion of the crime victims fund which is set aside for Federal crime victims, which is only 1 percent.

We established a special fund to provide emergency services and have provided that funding for mental health emergency treatment for numerous child sexual abuse cases in South Dakota, Arizona, and there were also a multiple-victim case in Maryland.

Because of the profound lack of services for crime victims in Indian country, we also have started a new discretionary grant program which will provide support for the start-up of victims assistance services in Indian country. We have begun our first awards in this program. We have awarded more than $1 million to nine States which in turn have then made sub-grants to 29 Indian tribes or Native American organizations on the reservations. A number of these projects will in fact provide a variety of services for child victims of sexual abuse in particular on the reservations.

We have announced another $700,000 for similar projects on other reservations and we expect to be able to provide second-year support for all of these grants. We hope that the availability of this special earmarked money will provide Native American children with improved access to victim assistance services.

As you are aware, in response to several of these child sexual abuse cases, the Victims of Crime Act was amended this last year so that 15 percent of the money provided for the Children's Justice Act is now available for us to use to improve the handling of sexual abuse cases on Indian reservations. We are going to be announcing that grant program probably within the next 30 days, and in conjunction with those grants to tribes to improve their handling of these cases, we will also make the award of a technical assistance grant to a national organization to assist the tribes in the improvement of their handling of their cases. As you know, there are many multiple jurisdictional issues in these kinds of cases.

In summary, the Office for Victims of Crime has initiated a number of activities to promote better treatment of child abuse victims. As deposits in the crime victims fund have increased, victim assistance programs and victim compensation has become more readily available for child victims of physical and sexual abuse. The range of services has expanded in many communities, and we think that we are beginning to see improved cooperation between law enforcement and social services in investigations and the way of case-handling decisions and also increases in the frequency where you see prosecutor-based victim witness programs.

As we look to the future, we are aware that we have a lot more progress to be made. We are eager to insure to do all we can to insure that multidisciplinary investigation and prosecution of child sexual abuse cases occurs in all communities, because the emphasis I think needs to be on inter-agency collaboration in these cases. We will continue our efforts to promote improved treatment of victims and witnesses. In particular, we will work vigorously to further improve and expand those services available to victims of Federal crime in Indian country.

Thank you.

[The prepared statement of Ms. Burnley follows:]

U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

STATEMENT

OF

JANE NADY BURNLEY, Ph.D.

DIRECTOR

OFFICE FOR VICTIMS OF CRIME

OFFICE OF JUSTICE PROGRAMS

U.S. DEPARTMENT OF JUSTICE

BEFORE THE

SENATE JUDICIARY COMMITTEE

UNITED STATES SENATE

WASHINGTON, D.C.

MAY 16, 1989

Mr. Chairman and Members of the Committee:

My name is Jane Nady Burnley. I am the Director of the Office for Victims of Crime (OVC) which is a Bureau within the Office of Justice Programs, U.S. Department of Justice. I have served in that capacity since late April 1987. I am pleased to have the opportunity to discuss the activities of the Office for Victims of Crime as they relate to child abuse.

Background

The Office for Victims of Crime was established in 1983 to be the Federal focal point for victims issues. The Office was given responsibility for implementing the 1982 President's Task Force on Victims of Crime. A major recommendation of that Task Force was that Federal funding should be made available to provide incentives for development of state and local victim service programs. While the President's Task Force on Victims of Crime focused primarily on broad based victims issues, it did recognize the complexities, wide spread nature, and inadequacies of the criminal justice system in dealing with family violence cases such as child abuse. Accordingly, it recommended that a task force be established to study the serious problem of violence within the family.

The Attorney General's Task Force on Family Violence was established and issued its report in 1984. The Task Force recommended that family violence, including various forms of serious child abuse, especially child sexual abuse, be recognized and responded to as a criminal activity. It called for the legal response to family violence/child abuse to be guided primarily by the nature of the abusive act, rather than the relationship between the victim and the abuser. The Task Force understood that serious child abuse and molestation are criminal matters and that steps had to be taken to reform the process utilized to investigate and prosecute these types of cases. Accordingly, it made several recommendations regarding how the system could be improved.

Included among these recommendations were: development of multi-disciplinary teams to investigate, process and treat all incidents of child abuse; having courts and prosecutors adopt special policies and procedures for children who are victims of abuse; having judges treat incest and molestation as serious criminal offenses; making child victims eligible to receive victim compensation funds; involving other disciplines such as medical, nursing, educational, mental health, and social services in child abuse prevention and awareness efforts; and revising the Uniform Crime Report to collect data on the relationship of the victim to the offender.

We are extremely pleased to state that considerable progress has been made by Federal, state and local governments on all these recommendations, for example: the Office for Victims of Crime has established and operates a National Victims Resource Center which houses a considerable amount of information on child abuse issues.

Some states have made admissible a child's videotaped statement to a specially trained investigator. Others have made admissible such a videotaped statement if the child was put under oath and subjected to cross examination. Still others have permitted the child to give live testimony in a trial but transmitted from another room by way of closed circuit television. At last count, 44 states had made some type of provision for protecting children while they testify. Other legislative developments passed by states to protect child witnesses include: amending child competency requirements; amending hearsay admissibility requirements; requiring counselors or guardians ad litem for children; extending the statute of limitations for child offenses; requiring speedy trials for offenses against children.

The FBI's Uniform Crime Report (UCR) is being revised and the relationship between victims and offenders will eventually be available from departments participating in the UCR program.

The work of the Office for Victims of Crime is not, however, confined to implementing the recommendations of these two distinguished task forces. Over the past several years the Office's efforts on behalf of abused children have expanded tremendously.

Victims of Crime Act

A benchmark response to the President's Task Force on Victims of Crime was passage of the Victims of Crime Act (VOCA) in 1984. VOCA established the Crime Victims Fund in the U.S.

Treasury to provide financial assistance to victim compensation programs and to improve both public and private sector services for victims of crime. It is significant to note that criminals -- not innocent taxpayers -- provide money for the Fund. The principal sources of funding are criminal fines collected from convicted Federal defendants, special penalty assessments, forfeitures and literary profits.

The 1988 amendments authorized deposits in the Fund through September 30, 1994 and increased the Fund's limitation. For FY 89 through FY 91, $125 million is authorized to be deposited in the Fund. Beginning in FY 92 the limitation will increase to $150 million. Funds deposited in the Fund shall be made available in the following manner. Of the first $100 million deposited in the Fund:

- 49.5% is available for state-operated victim compensation programs;
- 45% is available to states to expand and enhance victim assistance programs;
- 1% is available for services for victims of Federal crime and for training and technical assistance for victim programs; and,
- 4.5% is available to the states to improve the handling, the investigation, and prosecution of child abuse cases, especially child sexual abuse. The Children's Justice Act portion of the Fund is

administered by the Department of Health and Human Services.

For the first time this year, 15% of this 4.5% will be made available by OVC for assisting Native American Indian tribes in developing, establishing, and operating programs designed to improve the handling, investigation and prosecution of child abuse cases, especially child sexual abuse cases.

In FY 89, the Fund is expected to exceed $100 million for the first time. When that occurs, sums up to $5.5 million above $100 million deposited in the Fund shall be made available for Child Abuse Prevention and Treatment Grants. Deposits in excess of $105.5 million but not in excess of $110 million shall be made available for victim assistance programs. Of deposits in excess of $110 million:

- 47.5% shall be made available for crime victim compensation programs;
- 47.5% shall be made available for crime victim assistance programs;
- 5% shall be made available for services to victims of Federal crime.

The funds collected in one year are awarded in the following year. To date, more than $371 million has been deposited in the Crime Victims Fund.

Victim Assistance and Compensation

Victim assistance funds augment state support for a variety of community-based service programs which include rape crisis programs, child abuse treatment programs, battered women shelters, victim witness programs and other services for victims of violent crime. It is important to note that serving child abuse victims is one of three priority areas specified in the VOCA victim assistance program. Victim compensation grants are awarded to approximately 42 state operated eligible programs which compensate victims for financial losses which are incurred as a result of crime. These losses typically include medical expenses, lost wages, funeral expenses, and mental health counseling expenses.

A detailed analysis of VOCA grants described in the 1988 Report to Congress on utilization of VOCA funds indicates that a significant proportion has been allotted for child abuse services.

Of $41 million allocated in FY 86 for victim assistance grants, $9.8 million supported 375 programs that served child abuse victims. While a number of these programs serve adult victims also, 219 served child victims exclusively. Of the $30 million available for victim assistance programs in FY 87, approximately $4.9 million supported child abuse victim programs. These programs provide a variety of services, including individual and group therapy, crisis intervention, victim-witness services and preparation for court, and liaison with criminal justice and medical systems, interdisciplinary evaluation and treatment planning for case disposition, and court appointed special advocates.

Children served by these programs ranged from infants, toddlers, and preschoolers to adolescents. Programs operate within a variety of settings: hospitals, private nonprofit child advocacy organizations, shelters, social service agencies, prosecutors' offices and judicial districts.

Crime victims compensation is awarded to innocent victims of all ages. Victims of child abuse, including child sexual abuse, have received an increasing amount of compensation annually. Among the states reporting compensation by type of crime, and within age categories, there has been a significant increase in the number of awards for child abuse victims during the past three fiscal years: in FY 1986, 4,434 child victims received $6,123,934 in awards; in FY 1987, 7,880 child victims received $9,031,115 in awards; in FY 1988, 17,510 child victims received $15,841,000 in awards.

Child physical and sexual abuse have devastating psychological effects on the child and his or her non-abusing family members. One eligibility requirement of VOCA is that compensation programs reimburse crime victims for mental health counseling. Since the enactment of VOCA, seventeen states have added or expanded coverage of mental health counseling. The result has been a significant increase in victim compensation payments for counseling between FY 1986 and FY 1988.

The following statements are examples of some of the child abuse claims which were paid by State Compensation Boards:

1) The claimant, the mother of three children ages 16, 14, and 12, all of whom were sexually abused by their natural father, filed three separate claims on behalf of the children. Due to the complexity of the psychological trauma endured, the children were referred to therapists for intensive therapy. The Board awarded reimbursement for continuing psychological counseling to be reviewed quarterly.
2) The victim, a white female, 1 year of age, was taken for a ride by her mother's boyfriend, who returned the child approximately 20 minutes later. After a period of crying by the infant, she was taken to the hospital and it was determined at this time to have had multiple fractures. The offender was arrested and pled guilty to Assault 3rd Degree.
3) A 3-year-old Montana girl was injured as her father tied her up and sexually molested her. He told her he would hurt her if she told. Charges were ultimately brought against the father. The Montana Board of Crime Control paid for the girl's physical examination, treatment and psychological counseling.

These are but a few examples of child victim services which are supported by VOCA funding. I am pleased to tell you that the Crime Victims Fund deposits increased by $16 million in FY 1988 and are expected to increase another $30 million this year. President Bush's budget request for Fiscal Year 1990 calls for full funding of VOCA programs, i.e., to the $125 million cap. As a result, we expect to see further expansion and improvement in child abuse victim services.

Native American Programs

The Office for Victims of Crime became involved in services for child abuse victims of Federal crimes in Indian country early in 1987. Shortly after the FBI investigation was begun into the John Boone case on the Hopi reservation, Jan Emmerich, the Victim Witness Coordinator for the Arizona U.S. Attorney's office, became aware that there could be as many as 140 potential child sexual abuse victims on the Hopi reservation involved in this one case. This was brought to the attention of the Victims Office when we received a request from Stephen McNamee, the Arizona U.S. Attorney, for funds to support emergency consultation to assist in interviewing the children.

The thorough investigation and handling of the case resulted in a guilty plea by Boone and he was sentenced in early June. However, it soon became apparent that while Boone was no longer a threat, the Hopi community had an enormous need for education, consultation with professionals, and an almost overwhelming need for treatment of the child victims and their families.

Our Office worked with the U.S. Attorney's office and with other Federal agencies (Bureau of Indian Affairs and Indian Health Service) in an attempt to assist in arranging for treatment for these victims. When it became apparent that no treatment was forthcoming, our Office decided to identify and fund professionals to provide treatment. We worked with the Victim Witness Coordinator in the U.S. Attorney's office to arrange for 2 therapists to be available in the Hopi community 4 days per month for a period of several months to provide short term emergency treatment for these children and their families.

Our involvement in the Hopi case marked the first time that the Crime Victims Fund was used to support treatment for crime victims in Indian country. A short time later, we received another request from the U.S. Attorney in Arizona to support expert consultation in another multiple victim case on the Navajo reservation, and we responded with funding for that case which allegedly involved more than 200 child sexual abuse victims.

In all, our Office has been involved in 9 multiple victim child sexual abuse cases that involved Federal jurisdiction. These cases, which are at various stages of prosecution, allegedly involve more than 900 potential child victims. They have occurred in BIA boarding schools, day schools, and some state schools located on Indian reservations. The perpetrators were school teachers or school personnel (e.g., a dorm aide and a maintenance man). Some of the teachers were in the community as many as twenty years; they had established trust and were able to abuse children again and again -- year after year.

Our experience with these and other cases in Arizona which came to our attention convinced us that there was a clear and pressing need for emergency services for child victims of crimes in Indian country. Victims of violent crimes on reservations often do not have access to victim assistance services which are available in many communities. Large numbers of child abuse victims were receiving no treatment at all, months after disclosure of the abuse and even prosecution.

In response to these and other cases which came to our attention, in 1988 our office decided that the development of victim assistance programs on Indian reservations would be the highest priority for the use of that portion of the Fund which is set aside for services to victims of Federal crime (1% of the Fund). As a result, we have initiated a number of activities which have enabled us to be responsive to some of these needs.

Emergency Services Funding

After committing approximately $50,000 to treatment of molested children on Hopi in 1988, OVC established a special fund totaling $250,000 which was set aside to provide emergency assistance and services to victims of Federal crimes. The money is made available through U.S. Attorneys' offices to meet emergency situations in which Federal victims need services which are unavailable through any other source. The vast majority of these funds has supported treatment services for Indian children and their families. In all, OVC has committed more than $150,000 for treatment of Native American child sexual abuse victims and their families.

We tapped that fund in March 1988 to provide approximately three months of therapy to approximately 20 elementary school girls, who were victims of child sexual abuse at the Rocky Ford School on the Pine Ridge Indian reservation. Other examples of activities supported by the emergency fund include:

- Support for training and consultation for parents and school staff on the Navajo reservation in a community which was affected by a large child sexual abuse case and to support a similar effort on the Cheyenne River Sioux reservation in Eagle Butte, South Dakota.
- Support for treatment for pre-school child sexual abuse victims who were enrolled in a daycare center on the Colorado River Indian reservation.
- Support for the attendance of victims and their families at the sentencing of the defendants in the casa of U.S. v. Tony Leyva, et.al. The case involved three evangelists who were prosecuted in the Western District of Virginia for transportation of young male across state lines for homosexual purposes. Most of the children were under the age of fifteen.
- Support for mental health services in connection with a Federal child sexual assault prosecution in

Maryland. The case involved at least 150 male victims ranging in age from 10 to 18 years. Many of these victims did not have access to public mental health services or did not have the resources to pay for private emergency short term mental health services needed to help them cope with the trauma of their victimization.

- Support for initial assessment and treatment of a large number of sexually abused children in two Navajo communities.

Sexual abuse and molestation often have long term psychological impact on victims and their families. Increasingly, Victim Impact Statements submitted to the court prior to sentencing are used to convey the devastating impact of a crime upon the victim. In one case which the U.S. Attorney successfully prosecuted the defendant was sentenced to 30 years for molesting Navajo boys. These child victims were affected by the length of time over which the abuse occurred and the relationship of the children to the perpetrator: the defendant was a well respected teacher and an accepted member of the community for 18 years. The defendant used his position of trust to molest children repeatedly. The Victim Impact Statements in this case contained the following comments:

" The family feels betrayed by the defendant's actions and believes that their two adolescent sons will continue to suffer from the lasting effects of this crime. The 16-year-old attempted suicide, lost all interest in school, and has made several sexual advances toward his younger siblings. The 15-year-old turned to alcohol abuse as a means of escaping his emotional problems and also lost interest in school. Mother believes the abuse will remain forever embedded in both youth's childhood memories."

" Victim has openly expressed feelings of depression, fear, guilt, anger and loss of sleep and appetite as a result of the abuse. As a result of the abuse which began in the 6th grade, the youth quit school in the 7th grade and has never returned to finish his education -- his employment opportunities are limited to washing dishes and odd jobs and he blames defendant for depriving him of a brighter future. "

"Youth continues to suffer a wide range of emotional difficulties which include depression, anxiety, fear, guilt and anger. He tends to blame himself for allowing the defendant to abuse him, is withdrawn and unable to concentrate on any future opportunities."

" Youth fears that his family and friends will discover his secret and that the defendant will seek revenge as a result of his willingness to tell the truth about what happened. The defendant gave him money, clothes and attention."

Native American Victim Services Grants

Because of the profound lack of services for crime victims in Indian country, last year the Office for Victims of Crime announced a new discretionary grant program to fund the development of victim assistance services in Indian country. Development of these services is OVC's highest priority for the Federal Victims Program, which represents 1% of the Crime Victims Fund. Early in this fiscal year, approximately $1 million was awarded in grants to nine state victim assistance agencies. The amount of awards ranged from $35,500 to $250,500. Arizona was awarded $250,500 and South Dakota was awarded $195,500. Other states receiving grants were Wisconsin, Michigan, North Dakota, Washington, Wyoming, Utah, and Oregon.

These state victim assistance agencies have awarded approximately 29 subgrants to Indian tribes and Native American organizations on reservations to support the development of a variety of victim assistance services. Many of these subgrants will improve the handling of child abuse cases. For example, both the Hopi and Pasqua Yaqui tribes in Arizona are implementing or expanding treatment programs for child abuse victims. The Oglala Sioux, the Crow-Creek Reservation, and the Cheyenne River Sioux in South Dakota will provide crisis intervention services and clinical counseling to child abuse victims.

Because of the interest and need, our Office has announced that an additional $700,000 will be available to support the development and expansion of victim assistance services on reservations in other states. OVC intends to provide second year funding to these victim assistance grants.

In order to provide training and promote victim service development, OVC and the South Dakota Coalition Against Domestic Violence co-sponsored a conference in Rapid City, South Dakota in November of 1988, entitled "Indian Nations: Justice for Victims of Crime." The conference focused on the special needs of crime victims on American Indian reservations as well as how to develop services to meet those needs. Several hundred Native Americans from tribes in the Western United States attended the conference, including judges, tribal law enforcement personnel, victims of crimes, and social services, mental health and health personnel. A second training conference on crime victim rights and services in Indian country is planned for November 1989 in Phoenix, Arizona. Presentations on effective handling of child abuse cases will be offered.

It is our hope that these new victim assistance programs will become part of the network of victim assistance programs throughout each of the states. It is clear that due to the geographic remoteness of many of the Indian reservations, child victims of crime have little or no access to victim assistance services which are needed. It is not our intention to create a separate service system for victims of Federal crimes. Instead, it is our hope that through the availability of this earmarked money, Native American children will have improved access to much needed victim assistance programs in their communities.

Childrens Justice Act

When the sexual abuse of children on the Hopi and Navajo reservations was revealed in 1987, the wide-spread nature of abuse of Native American children and the problems the tribes faced in trying to deal with the abuse became evident. The difficulties manifested themselves in such issues as: lack of resources to effectively deal with reported cases of abuse; lack of trained practitioners to investigate, prosecute and treat child sexual abuse cases; geographic isolation; cultural diversity; and lack of clear understanding of the roles and responsibilities of the various government entities that had authority to respond and act upon allegations and findings of child sexual abuse on the reservations.

In response to this problem, the Anti-Drug Abuse Act of 1988 amended the Childrens Justice Act and the Victims of Crime Act to authorize that 15% of the funds available for the Childrens Justice Act be utilized in Indian country. This amendment made available funds for a special program dedicated solely to assisting Native American Indian tribes in developing, establishing and operating programs designed to improve the handling of child abuse cases in a manner which limits additional trauma to the child victim, and improves the investigation and prosecution of cases of child abuse. Unlike the Children's Justice Act grants to States, funds for this program will go directly to Indian tribes.

Through discretionary grants which will soon be announced, the Office for Victims of Crime is seeking to bring about systemic improvement in the way child sexual abuse cases are responded to on reservations and other locations where Native Americans reside. We will support programs that foster greater cooperation among all responsible agencies (law enforcement, prosecutors, health, mental health, social services and victim services) to increase effectiveness of prosecution, reduce the trauma to children, and provide appropriate services. In conjunction, we will support training and technical assistance to tribes that receive these grants.

Federal Victim and Witness Protection Act

The Victim Witness Protection Act of 1982, (Public Law 97-291), recognized the important role of crime victims and witnesses in the Federal criminal system and the need to provide them with assistance. Following enactment of the Victim and Witness Protection Act, the Attorney General promulgated guidelines to ensure the effective implementation of the Act. In accordance with these guidelines victim witness procedures have been established in each United States Attorney's Office, and each office has designated an individual to make certain the procedures are followed. Through Congressional and Department of Justice efforts, a victim witness staff position has been allocated for each of the 94 Federal judicial districts.

These individuals provide victim witness assistance, make referrals to victim compensation and service programs and assist with developing Victim Impact Statements. Though the types of crimes prosecuted vary widely in the Federal judicial districts, there are a number of districts that place prosecution of child sexual abuse and the provision of needed services to victims and their families as a priority. Most Federal cases involving child sexual or physical abuse occur in U.S. Attorneys' offices where there are large Federal enclaves such as Indian reservations, parks, forests, or military installations. The increased number of victim assistance staff in these districts have enabled the Justice Department to address the complex issues of child sexual abuse more effectively. In the District of Arizona, a model program has 3 staff dedicated to victim witness services. The most complex cases under Federal jurisdiction have arisen in Indian country where victims are in remote areas, there is a dearth of services and the cases involve multiple victim child molestation.

Federal Law Enforcement Training

Another aspect of OVC's effort to improve the response to child victims of Federal crimes has been training for Federal law enforcement officers, prosecutors and victim witness staff. We have supported efforts of the Federal Law Enforcement Training Center in Glynco, Georgia, to ensure that new Federal law enforcement personnel from more than 50 Federal agencies receive training in the appropriate treatment of victims and witnesses. In addition, the Office for Victims of Crime is currently assisting a number of Federal law enforcement agencies to provide victim witness related in-service training for officers who completed their training prior to the development of the existing victim/witness courses.

In addition, we have provided specialized training for multi-disciplinary teams of Federal professionals (FBI Agents, U.S. Attorneys, Victim Witness Coordinators and military staff) aimed at building team skills and promoting an interdisciplinary approach to coordinating all aspects of the investigation, prosecution and provision of assistance services in cases of child sexual abuse.

Summary

In summary, the Office for Victims of Crime has initiated a number of activities to promote better treatment of child abuse victims. As deposits in the Crime Victims Fund have increased, victim assistance programs and victim compensation have become more readily available for child victims of physical and sexual abuse. As a result, the range of services has expanded in many communities, cooperation between law enforcement and social services in investigations and case decision making is becoming more frequent and prosecutor-based victim witness programs are more readily available.

As we look to the future, we are aware that while services have improved, much more progress needs to be made to ensure that effective, multi-disciplinary investigation and prosecution of serious child abuse cases occurs in all communities. We will continue our efforts to promote improved treatment of child victims and witnesses. In particular, we will vigorously work to further improve the response to child abuse in Indian country where there is Federal jurisdiction for prosecution.

The CHAIRMAN. Thank you, Ms. Burnley.

Ms. Stewart?

STATEMENT OF MS. BETTY STEWART

Ms. STEWART. Thank you very much, Mr. Chairman.

I am Betty Stewart, Associate Commissioner of the Children's Bureau, and I want to thank you for providing me with this opportunity to share with you information and insights acquired by the National Center on Child Abuse and Neglect, on the problem of how child abuse victims are treated in the judicial system.

The National Center on Child Abuse and Neglect was established under the provisions of the Child Abuse Prevention and Treatment Act. The National Center is located in the Children's Bureau within the Administration for Children, Youth, and Families, Office of Human Development Services.

The National Center conducts activities designed to assist and enhance national, State and community efforts to prevent, identify and treat child abuse and neglect. These activities include conducting research and demonstrations which examine the causes, prevention, identification, and treatment of child abuse; conducting research into the national incidence of child abuse; supporting service improvement projects; gathering, analyzing and disseminating information through a national clearing house; providing grants to States for strengthening and improving child protective service programs; and coordinating Federal activities related to child abuse and neglect through an advisory board and an interagency task force of Federal agencies.

One of the State grant programs administered by the National Center is the Children's Justice Act. This Act makes grants to assist States in developing, establishing, and operating programs designed to improve the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim and to improve the investigation and prosecution of cases of child abuse, particularly child sexual abuse.

States are eligible for these grants if an appropriate State task force has reviewed, evaluated, and made recommendations to the governor regarding State procedures to handle cases of child abuse, particularly child sexual abuse. States utilize these funds to adopt State task force recommendations in the following areas:

Investigative, administrative and judicial handling of child abuse cases—particularly child sexual abuse—in a manner which reduces additional trauma to the child victim and which also ensures procedural fairness to the accused;

Experimental model and demonstration programs to test innovative approaches and techniques to improve the rate of successful prosecution or enhance the effectiveness of judicial and administrative action; and

Reform of State laws, ordinances, regulations and procedures to provide to children comprehensive protection from abuse, particularly child sexual abuse, while ensuring fairness to all affected persons.

As Dr. Burnley just mentioned, Children's Justice Act grants are funded from deposits in the Crime Victims Fund. The first set of these grants was awarded in fiscal year 1988, with 25 States receiving a total of $2.8 million from funds deposited in the Crime Victims Fund during fiscal year 1986; 27 States received a total of $3.485 million from funds deposited during fiscal year 1987.

States have used their Children's Justice Act grants to fund a variety of innovative programs.

In December 1988, the National Center held the first of its annual meetings with these grantees, at which time important resources were shared and discussed in order to provide assistance to the them in further development their efforts.

The first performance reports from States are due in December 1989. Following the receipt of those reports, the Department will evaluate the effectiveness of programs and prepare a report to Congress, which is due in 1990.

Among the National Center's efforts in the areas of research, demonstration, training, and technical assistance, I would like to discuss two broad issues which I think would be of interest to this hearing: The first, efforts to protect the rights of children and safeguard them from additional trauma; and, second, efforts to evaluate the credibility of children as witnesses.

Regarding the issue of protecting the rights of children and reducing trauma, we have three areas currently under exploration. The first area relates to how a multidisciplinary team, which works with a case from the time it is first reported through the court processes and treatment, can reduce trauma to the child victim. Typically, housed within one location within a community, such a team helps assure that the victim and his family are taken through the sequence of preparation for investigation and court procedures with persons especially trained to reduce trauma.

The prototype for this approach was developed at the Children's Advocacy Center in Huntsville, AL, and has been partly or fully replicated in nearly 250 locations across the country. In 1988, the Children's Advocacy Center was funded to be our National Resource Center on Child Sexual Abuse. This enables the Huntsville Center to further replicate its very successful model, as well as to address a number of other critical issues involving child sexual abuse.

In 1985, the National Center also supported a series of additional demonstrations on the coordination and handling of sexual abuse cases among the child protection, the law enforcement and the legal system. In these projects, interdisciplinary cooperation and coordination resulted in improved service delivery to the victim and improved communication between agencies and the families. Case tracking was improved and prosecutions were increased.

Another area supported by the National Center is the development of models for advocates in courts. Nineteen projects were funded to replicate the model of Court Appointed Special Advocates, known as CASA, a national lay advocate model which is now widely used in juvenile and family courts across the country. This program recruits and trains lay volunteers to conduct independent investigations on behalf of the court in cases of child abuse or neglect.

In 1988, we supported additional demonstrations to develop this model for use in criminal courts, recognizing that the application of this resource in the more complex setting of criminal court needed attention. Also, in 1988, the National Center completed a national study of five guardian ad litem models in use by various States and communities, looking at what activities they performed and how effective they were in serving the child's best interest. This study found that the CASA model, when combined with a paid attorney or when used alone was the most successful of the five models we looked at.

The third area supported by the National Center which addresses the reduction of trauma to victims is research to determine what the impact of disclosure of sexual abuse is on both the victim and the victim's family. Our earliest efforts to explore the impact of child sexual abuse on the child examined the effect from a developmental viewpoint and found, not surprisingly, that children are affected differently at different ages. Several of our later research efforts are examining the effects of specific types of disclosure in varying situations on the family and on the victim. Nearly all of these projects are on-going, but from them we hope to learn ways to intervene in sexual abuse cases at various stages in order to decrease trauma and improve successful prosecution.

As information and knowledge about these and other areas becomes available, the National Center has several training and technical assistance resources available to assist States and communities in replicating the knowledge gained in these areas. The National Center supports three national resource centers which address issues concerning child abuse and neglect.

The National Child Abuse and Neglect Clinical Resource Center is focused on improving front-line clinical work in child protection. The National Resource Center for Child Abuse and Neglect Systems provides support to State protection systems. The National Resource Center on Child Sexual Abuse in Huntsville, AL, was mentioned earlier. A fourth center partially funded by the National Center is the National Legal Resource Center for Child Welfare, which provides information and training on judicial and legal developments in child welfare and child abuse and neglect.

In addition, recognizing that developing professional awareness of the problem or child abuse and neglect begins with the initial education of professionals, we have provided support for the development of 10 university-based interdisciplinary training programs involving various professions, including social work,psychology, medicine, and the law. The purpose of these programs is to teach various professionals how to work with other disciplines in recognizing and addressing child abuse and neglect.

The second major focus of our research and demonstration efforts is the credibility of children as witnesses. An increasing number of children are becoming involved in court proceedings, and their effectiveness is controversial. Sexual abuse is often difficult to discuss. If a child has been sexually abused, the event may be surrounded in secrecy. Usually, there are no witnesses.

To assist the child in describing the event, researchers are exploring several techniques, including the use of anatomically correct dolls. If the child's anxiety and trauma are reduced, the assumption is that the quality of the testimony is improved. The goal is both to reduce the trauma and to improve the quality of the case developed for trial. While most of the research in this area is also on-going, preliminary results indicate that a child's truthfulness and his or her capacity to testify in court, even at a young age, is much more reliable than previously believed.

We believe that it is important to take children's developmental and emotional needs into account when setting up court processes addressing child abuse and neglect cases, and we intend to continue to address issues which seek improvements in the treatment of these victims in the judicial system.

Thank you for this opportunity to share information with you, and I will be happy to answer any questions.

[The prepared statement of Ms. Stewart follows:]

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of
Human Development Services

Office of Assistant Secretary
Washington D C 20201-0001

Testimony of

Betty Stewart

Associate Commissioner of the Children's Bureau

before the

Senate Committee on the Judiciary

May 16, 1989

10:00 A.M.

226 Dirksen Senate Office Building

Mr. Chairman, Members of the Committee:

I am Betty Stewart, Associate Commissioner of the Children's Bureau. Thank you for providing me this opportunity to share with you information on and insights acquired by the National Center on Child Abuse and Neglect on the problem of how child abuse victims are treated in the judicial system.

Background

The National Center on Child Abuse and Neglect (the National Center) was established under the provisions of the Child Abuse Prevention and Treatment Act. The National Center is located in the Children's Bureau within the Administration for Children, Youth, and Families, Office of Human Development Services.

The National Center conducts activities designed to assist and enhance national, State, and community efforts to prevent, identify and treat child abuse and neglect. These activities include conducting research and demonstrations which examine the causes, prevention, identification, and treatment of child abuse; conducting research into the national incidence of child abuse; supporting service improvement projects; gathering, analyzing and disseminating information through a national clearinghouse; providing grants to States for strengthening and improving child protective service programs; and coordinating

Federal activities related to child abuse and neglect through an Advisory Board on Child Abuse and Neglect and an Interagency Task Force of Federal agencies.

Children's Justice Act Grants

One of the State grant programs administered by the National Center is the Children's Justice Act. This Act makes grants to assist States in developing, establishing, and operating programs designed to improve the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim and to improve the investigation and prosecution of cases of child abuse, particularly child sexual abuse.

States are eligible for these grants if an appropriate State task force has reviewed, evaluated, and made recommendations regarding State procedures to handle cases of child abuse, particularly child sexual abuse. States utilize these funds to adopt State task force recommendations in the following areas:

- investigative, administrative and judicial handling of child abuse cases - particularly child sexual abuse - in a manner which reduces additional trauma to the child victim and which also ensures procedural fairness to the accused;

- experimental model and demonstration programs to test innovative approaches and techniques to improve the rate of successful prosecution or enhance the effectiveness of judicial and administrative action; and

- reform of State laws, ordinances, regulations and procedures to provide to children comprehensive protection from abuse, particularly child sexual abuse, while ensuring fairness to all affected persons.

Children's Justice Act grants are funded from deposits in the Crime Victims Fund, established by the Victims of Crime Act of 1984. The first set of grants was awarded in fiscal year 1988. Twenty-five States received a total of $2.8 million from funds deposited in the Crime Victims Fund during fiscal year 1986; 27 States received a total of $3.485 million from funds deposited during fiscal year 1987.

States have used their Children's Justice Act grants to fund a variety of innovative programs including:

- training programs including interdisciplinary team training for law enforcement, attorneys, protective service workers, physicians, and mental health workers; training for child protective service and mental health professionals on sexual abuse and disabled children; and bilingual and bi-cultural training for caseworkers and foster parents on how to work with sexual abuse victims.

- hospital-based programs to train clinical residents in techniques for interviewing and evidence collection, and to develop a team approach for diagnostic medical and psychological assessment of child sexual abuse victims;

- victim advocacy programs providing direct counseling to the child victim as the case works its way through the judicial system;

- a program to develop a protocol on interviewing child victims using videotaping;

- a program to develop a crisis response team (caseworker and police officer) for routine involvement in all sexual abuse calls; and

- a program to work with, and break the cycle for juveniles who are both child sexual abuse victims and perpetrators.

In December 1988, the National Center held the first of its annual meetings with these grantees, at which time important resources were shared and discussed in order to provide assistance to the grantees.

The first performance reports from States are due in December, 1989. The Department will evaluate the effectiveness of these programs and prepare a Report to Congress in 1990.

Research and Demonstration Activities

Among the National Center's efforts in the areas of research, demonstration, training, and technical assistance, I would like to discuss two broad issues which may be of specific interest in this hearing: (1) efforts to protect the rights of children and safeguard them from additional trauma and (2) efforts to evaluate the credibility of children as witnesses.

A. Protecting the Rights of Children and Safeguarding Them from Additional Trauma

Regarding the issue of protecting the rights of children and reducing trauma to the victim, we have three areas currently under exploration. The first area relates to how a multi-disciplinary team, which works with a case from the time it is first reported through the court processes and treatment, can reduce trauma to the victim. Typically, housed within one location within a community, such a team helps assure that the victim and his family are taken through one sequence of preparation for investigation and court procedures with persons especially trained to reduce the trauma to the victim.

The prototype for this approach was developed at the Children's Advocacy Center in Huntsville, Alabama and has been partly or fully replicated in nearly 250 locations across the country. In 1988, the Children's Advocacy Center was funded to be our National Resource Center on Child Sexual Abuse. This enables the Huntsville Center to further replicate its very successful model, as well as to address a number of other critical issues involving child sexual abuse.

In 1985, the National Center also supported a series of additional demonstrations on the coordination and handling of sexual abuse cases among the child protection, the law enforcement and the legal systems. In these projects, interdisciplinary cooperation and coordination resulted in improved service delivery to the victim and improved communication between agencies and the families. Case tracking was improved and prosecutions were increased.

The second area supported by the National Center the development of models for advocates for children in courts. Nineteen projects were funded to replicate the model of Court Appointed Special Advocates, known as CASA, a national lay advocate model which is now widely used in juvenile and family courts across the country. This program recruits and trains lay volunteers to conduct independent investigations on behalf of the court in cases of child abuse or neglect. The information, gathered through interviews and review of records, is submitted as a formal report to the court and contains recommendations to enable the court to make sensitive and sound decisions regarding placement of the child.

In 1988, we supported additional demonstrations to develop this model for use in criminal courts, recognizing that the application of this resource in the more complex setting of criminal court needed attention. Also, in 1988 the National Center completed a national study of five guardian ad litem models in use by various States and communities, looking at what activities they performed and how effective they were in serving the child's best interest. The study found that the CASA model, when combined with a paid attorney or when used alone was most successful. The staff attorney model was reasonably successful, but the paid private attorney and law school clinic models were found to be ineffective.

The third area supported by the National Center which addresses reduction of the impact of trauma on the victim is research to determine the traumatic impact of disclosure of sexual abuse on both the victim and the family. Our earliest efforts to explore the impact of child sexual abuse on the child examined the effect from a developmental viewpoint and found, not surprisingly, that children are affected differently at different ages. Several of our later research efforts are examining the effects of specific types of disclosure in varying situations on the family and the victim. Nearly all of these projects are ongoing, but from them we hope to learn ways to intervene in sexual abuse cases at various stages in order to decrease trauma to the child and improve successful prosecution.

As information and knowledge about these and other areas becomes available, the National Center has several training and technical assistance resources available to assist States and communities in replicating the knowledge gained in these areas. The National Center supports three national resource centers which address issues concerning child abuse and neglect. The National Child Abuse and Neglect Clinical Resource Center is focused on improving front line clinical work in child protection. The National Resource Center for Child Abuse and Neglect Systems provides support to State child protection systems. The National Resource Center on Child Sexual Abuse in Huntsville, Alabama, was mentioned earlier. A fourth center, partially funded by the National Center, is the National Legal Resource Center for Child Welfare which provides information and training on judicial and legal developments in child welfare and child abuse and neglect.

In addition, recognizing that developing professional awareness of the problem of child abuse and neglect begins with the initial education of professionals, we have provided support for the development of ten university-based interdisciplinary training programs involving various professions including social work, psychology, medicine, and the law. The purpose of these programs is to teach various professionals how to work with other disciplines in recognizing and addressing child abuse and neglect.

B. Credibility of Children as Witnesses

The second major focus of our research and demonstration efforts is the credibility of children as witnesses. An increasing number of children are becoming involved in court proceedings, and their effectiveness as witnesses is controversial. Sexual abuse is difficult to discuss. If a child has been sexually abused, the event may be surrounded by secrecy. Usually there are no other witnesses. To assist the child in describing the event, researchers are exploring several techniques, including the use of anatomically correct dolls. If the child's anxiety and trauma are reduced, the assumption is that the quality of the testimony is improved. The goal is to both reduce the trauma for the child and improve the quality of the case developed for trial. While most of the research in this area is ongoing, preliminary results indicate that a child's truthfulness and his or her capacity to testify in court, even at a young age, is much more reliable than previously believed.

Closing Statement

We believe it is important to take children's developmental and emotional needs into account when setting up court processes addressing child abuse and neglect cases. We intend to continue to address issues which seek improvements in the treatment of child abuse victims in the judicial system.

I am pleased to have the opportunity to share this information with you. I would be happy to answer any questions.

The CHAIRMAN. Let me ask you both a question. When Senator Thurmond and I several years ago set up this fund, funded by fines, the purpose at the time was, we thought, to assist the victims, and you both laid out for us how some of that assistance is taking shape and form.

But the question I would like to ask you both is how well are the two of your agencies coordinating the funding for the investigation and prosecution of child abuse cases? Both of you provide funding for child victims programs, and it is no secret that many believe that the criminal justice programs should be administered by one Federal agency, not two. Could you please tell me what you believe are the benefits for having the Department of Health and Human Services administer approximately $3 million in 1987 funds for the investigation and prosecution of abuse cases, while the Department of Justice administered approximately $14 million for other justice programs that serve child victims?

Ms. BURNLEY. Well, Senator, you are probably familiar with the fact that last year, during the reauthorization of the Victims of Crime Act, the Department of Justice in fact sought to have the Children's Justice Act transferred to our office for administration. We were unsuccessful in that. We worked with your staff and Senator Thurmond's staff diligently and on the House side toward that end.

We were pleased to have some portion of that fund set aside for child victims in Indian country. Since the Congress in fact spoke with regards to how it should be organized, our offices will continue to administer it the way we have. Our office transfers the money to the Department of Health and Human Services.

I happen to be very familiar with the programs over there, because I used to sit where Betty sits now, my colleague, Betty Stewart, as the Associate Commissioner for the Children's Bureau, so I am very familiar with the NCCAN programs.

We did collaborate when the Children's Justice Act State grantees came to town, we did collaborate on the agenda for that training session when the agencies which had been designated by governors in each of the States to receive those moneys came——

The CHAIRMAN. When you say collaborate, did you sit down with your counterpart and say, okay, this is what we are going to do with our money, and they say this is what we are going to do with our money, and let's see if it overlaps, let's see if it compliments one another? Do you actually do that?

Ms. BURNLEY. Well, I was speaking specifically with regard to the collaboration regarding the message for those who will be receiving the Children's Justice Act grants, collaboration on the agenda——

The CHAIRMAN. What do you mean by "the message"?

Ms. BURNLEY. What do I mean by "the message"? What I mean is that the purposes of the Children's Justice Act and that there is a clear signal from both agencies that we have a consistent message with regards to the fact that the primary purpose of the Children's Justice Act is to improve the prosecution and handling of child abuse cases, in particular child sexual abuse cases.

The **Chairman**. I wonder if the message has been clarified. How do or do you coordinate how the money that follows the message will be distributed?

Ms. **Stewart**. Let me just say one thing, Senator, in response to your earlier question about where the money comes from and why it is administered in a different place.

The **Chairman**. Well, I know why it is administered, I wrote the law and I understand it.

Ms. **Stewart**. OK.

The **Chairman**. You don't need to instruct me on something I wrote. I don't need your instruction.

Ms. **Stewart**. I apologize.

The **Chairman**. I need to know how it is working, how are you coordinating.

Ms. **Stewart**. Well, I think, as Dr. Burnley pointed out, we did have our first meeting of these grantees this year and we worked together very closely in the developing of the agenda for that meeting. When you speak of coordination, I assume that you are talking about are there things that we do together in terms of working with the States in terms of——

The **Chairman**. Or are there things that your counterpart does, that you conclude covers areas that you were going to do but that you are not going to do now, or covers things that you can have complimentary initiatives? It is a real simple question.

Let me try to put it in more simple language. I do not think anybody would understand any of the testimony either of you gave, because it is Washingtonese, you know. I understand it and I think maybe the experts out here do who are listening.

What is your first name, doctor?

Dr. **Burnley**. Jane.

The **Chairman**. Well, your counterpart would probably call and say, Jane, what are you doing with your money, who are you sending it to, who did you speak to in the State, what are you going to do with this, that or the other thing. Is there that kind of collaboration?

Ms. **Stewart**. There is not that kind of collaboration around this Children's Justice Act money, for the simple reason that the grants go to the States, the States then subcontract or develop programs that meet the needs of their States.

The **Chairman**. I know that, but you also exercise judgment over what types of programs will receive funds.

Ms. **Burnley**. Senator Biden, having administered the various child welfare programs, including research and demonstration grants at HHS and the child welfare grants, as you are well aware, they are for very different purposes. Our funding does support direct services as channeled through the victim assistance agencies in the States. Those tend to be different agencies oftentimes from those agencies to get the child welfare services grant moneys. The child welfare services grant moneys are used for slightly different purposes. They follow a funding stream which is created by the purposes of this specific legislation, such as Public Law 96-272 and others, like the child abuse grant.

We have had a major initiative this last year to improve law enforcement and child protective services communication in terms of the response to child abuse cases and have participated in a conference. We funded a conference together that brought in major law enforcement and child protective services leaders from around the country to work on how to improve communication and develop our national standards.

The CHAIRMAN. Let me ask you another way: Why did you want it all in your agency?

Ms. BURNLEY. Well, the initial legislative proposal that Justice put forth was in fact to have the Children's Justice Act funded through another mechanism, to have a full 5 percent for Federal crime victims, because the services needs were so great on Indian reservations. That was our initial purpose.

Our secondary purpose in getting the Children's Justice Act funds back to our agency was that the Department of Justice—and the principal purpose of the Children's Justice Act is I think improved prosecution of child abuse cases, with an interdisciplinary perspective clearly, improved systems, and I felt and I think the Department of Justice felt and HHS concurred that the administration of that program, with oversight through the Judiciary Committee, in some ways made more sense and that is what we attempted to do and what we communicated with you all in that discussion.

The CHAIRMAN. Let me ask you another question and I won't trespass on your time any longer. In the 1988 reauthorization of the Child Abuse Act, it requires that the National Center for Child Abuse and Neglect conduct a study on how effective States are in providing legal representation of children in child abuse cases.

You state in your testimony that this study found that the court-appointed special advocate program was particularly effective, is that correct?

Ms. STEWART. Senator, that was in my testimony.

The CHAIRMAN. Excuse me. Yes. Why was it?

Ms. STEWART. The study that I cited was a separate study. The study that I cited was looking at five models of guardian ad litems. That was done last year, completed last year. The study that is required in the new legislation is a study to see whether or not States have in place throughout the State guardian ad litem services which is one of the requirements of the child abuse law. So that is a separate study that we will be conducting. We will be contracting to have that study done very shortly.

The CHAIRMAN. Thank you for clarifying that. We had that wrong. We thought the study that you were referring to was one that was already conducted and you made a judgment about.

Ms. STEWART. The study I referred to has been completed.

The CHAIRMAN. Don't try to explain it to me anymore. I am lost. There is no sense in me trying to find myself in this hearing. I appreciate very much your testimony.

Is there anything you all would like to say before we close? Nothing else? OK.

Thank you very much for being here. I appreciate it.

Our next panel, who we have kept waiting so long, is made up of Robert E. Cramer, district attorney, Madison County, Huntsville, AL. He is president of the National Children's Advisory Center, a model program for a multidisciplinary approach to the prosecution of child abuse. Joe Dell'Olio, who is a personal, long-time friend, the executive vice president of Child, Inc., of Wilmington, DE, a nonprofit agency providing a variety of services to child victims and families in crisis, and I might add one of the few outfits that is doing it at home.

And Judge Tom McDonald. He is president of the National Court Appointed Special Advocate Association. He is a judge in Louisville, KY. The National Court Appointed Special Advocate Association supports programs that recruit and train community volunteers to represent abused and neglected children in juvenile and family court proceedings.

And Jayne Crisp. She is the director of the Victim Witness Assistance Program in the Thirteenth judicial Circuit in Greenville, SC. This program provides services to children to help them participate in the criminal court process.

Welcome all, and again thank you for being so kind and generous with your time. I am sorry for your delay.

Why don't you begin, and to the extent that you can, and I don't blame you if you don't because no one else has listened at all, including the Government witnesses, keep it to 5 minutes. So, if you can, fine. If you can't, do what everybody else did and take as long as you want. Because it would be unfair now to impose a rule on you that no one else has been willing to stick by.

But with that why don't I yield now, and to start with you, Mr. Cramer, if I can, and then work our way across in the order you have been called. Thank you.

A PANEL CONSISTING OF: ROBERT E. CRAMER, JR., DISTRICT ATTORNEY, MADISON COUNTY, HUNTSVILLE, AL; JOSEPH M. DELL'OLIO, EXECUTIVE VICE PRESIDENT, CHILD, INC., WILMINGTON, DE; HON. TOM McDONALD, PRESIDENT, NATIONAL COURT APPOINTED SPECIAL ADVOCATE ASSOCIATION, LOUISVILLE, KY; JAYNE CRISP, DIRECTOR, VICTIM WITNESS ASSISTANCE PROGRAM, THIRTEENTH JUDICIAL CIRCUIT SOLICITOR'S OFFICE, GREENVILLE, SC

Mr. **Cramer**. Thank you, Senator Biden, Senator Heflin. I am privileged to be here and speak on this very difficult issue, and want to thank the rest of the staff for helping me prepare for this as well.

I became a prosecutor in 1981, elected DA. Prior to that was an assistant DA working in juvenile court, so I felt like I gained a lot of front line experience with children in that position as well.

I was not prepared to face the kind of issues that I had to face in 1981, 1982 and 1983 which led our community to design this multidisciplinary program that we refer to as the National Children's Advocacy Center.

In 1981, 1982 and 1983 what we started reviewing together were many cases of child sexual abuse. I was much more familiar with child physical abuse, child neglect, but not familiar at all with child sexual abuse.

We looked at the system that existed in our community, the system that was composed of the social workers, the law enforcement detectives, the prosecutors, the medical community, the mental health community, the education community, the components of those systems, and we looked at what they were doing with children in cases and we were appalled. Quite frankly, through a task force that I was involved in, we reviewed a case that I had been personally involved in. I was professional number eleven that had interviewed a little 12-year-old child, and that was a year after the abuse had occurred. It is no wonder that children do recant. It is no wonder that children do shut down on the professionals trying to deal with them.

The program that we put together is a facility-based program. We decided that basically we were the system that was responding to children. That if the system was to be changed, it was up to us to do it. We wanted children not to be interviewed in prosecutor's offices, not to be interviewed in police stations, not to have to be routed all over the city, and the best way to solve that is to establish a new facility with an environment that does speak first and foremost to the child and family, and then we would all give up our turf and go to that turf to deal with the child and family

Our preference was to find a house that we could locate a program in. A house that would be between the agencies that would need to access the house to work there. I thought that funding would be our primary problem. Funding was not our primary funding problem. Turf issues were our primary problems: changing what we had been used to doing, educating ourselves, training ourselves.

I looked around at the 15 prosecutors that I could assign child abuse cases to, and I saw that very few of them really could handle the subject matter. Very few of them even wanted to be involved with a child in a courtroom setting. They were afraid of he children. They were afraid of the subject matter.

We started concentrating on picking people, and then causing those people to specialize. What we established at our facility program is a program that routes all the agency personnel in there. We are an interview facility. Now, rather than having children come to the fourth floor of the 10-story tall courthouse building, our prosecutors go to this center where they are able to meet with the children in interview rooms that are age-appropriate interview rooms.

What I have learned about child abuse, particularly child sexual abuse, is really more than I wanted to have to learn. We have come a long way. We opened our program May 1, 1985. In 1982, we took 12 cases of sexual abuse into the criminal justice system. In the year 1988, we took more than a hundred cases of child sexual abuse into the criminal justice system. Still that is barely 40 percent of the cases that we review together at the Children's Advocacy Center program.

The way our program is now——

The CHAIRMAN. Forty percent——

Mr. CRAMER. Forty percent.

The CHAIRMAN [continuing]. Of those that the interdisciplinary agency, that the agencies went to the house to interview, 40 percent of those kids——

Mr. CRAMER. That is right.

The CHAIRMAN [continuing]. Were the only ones that got into the court system.

Mr. CRAMER. That is right.

The CHAIRMAN. Why did the other 60 percent not?

Mr. CRAMER. For a variety of reasons. It may be that based upon the advice of a psychologist that we didn't think this 9-year-old could make it in the criminal justice system. Even though I would be motivated to want to see this situation wind up in the criminal justice system, I couldn't sacrifice a 9-year-old in that process.

The dynamics that affect families that are involved in child abuse cases are overwhelming, in addition to what the system imposes upon them. For instance, the mother of today that may be the nonoffending parent that is outraged at what happens may be the person turning on the child 3 or 4 months from now. So we have a lot that works against a child positively participating in the criminal justice system.

Even though only 40 percent of the cases are currently making it into the criminal system, that is a long way from where we were when we first——

The CHAIRMAN. I know. I wasn't being critical. I was just trying to get a sense of why.

Mr. CRAMER. I understand. We have developed a staff of specialist there at the Children's Advocacy Center. We now have moved much more into the area of treatment for children and families. For instance, those children that don't make it into the criminal justice system are provided with long-term treatment for the abuse that they have sustained. The children that do go into the criminal justice system, they also, once the criminal justice system is over with. They are followed through with treatment once the court process is over with.

We are pleading out a lot more cases now, appropriately so for me as a prosecutor, than we were 4 or 5 years ago, because I think our community, the defense bar, is aware that we are a program that does respond rather quickly to children, that we do have experts that do know how to interview children that can go to court and say what they need to say in court to offer a judge kind of prompt information that a judgment might want to have.

But I am not trying to tell you, Senator Biden, that we have cured all the problems in the child sexual abuse area. In the few remaining minutes, I want to say that, while I did not come prepared to defend the piece of legislation that is being proposed, I believe that on the front line that what we prosecutors, we law enforcement detectors, we judges, others that are involved in the child abuse system, we need to learn more about children and how to help them with the problems that they have.

If the police and social worker will cooperate together and do an investigation together and interview a child together, then that child and family won't have to start all over in someone's office with the same process. So, if we do a more complete job on the front end, we can cause the child and family not be as revictimized by the system.

I think it is important that the Federal Government recognize this subject matter and take a lead in it. But I think we have a responsibility on the front line, and we think that is what a program like ours have demonstrated. We have helped many other communities around the country establish programs that are copied after our program. We have benefited from Federal grant money. That if it wasn't there, I am not saying we wouldn't have had our program, but our program wouldn't be today what it is today. So I think it is important.

We have benefited from Children's Justice Act moneys, from the Victims of Crime moneys. We were a demonstration project of NCCAN, and then we most recently competed for and were named the National Resource Center on Child Sexual Abuse through the NCCAN grant.

Thank you for this opportunity to allow me to be here and speak from my experience base. Thank you.

The CHAIRMAN. Thank you for saying it well as well.

[The prepared statement of Mr. Cramer follows:]

the national children's advocacy center

106 LINCOLN STREET • HUNTSVILLE, ALABAMA 35801
(205) 533-KIDS

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STATEMENT OF

ROBERT E. CRAMER, JR., DISTRICT ATTORNEY
MADISON COUNTY (HUNTSVILLE), ALABAMA

AND

PRESIDENT
NATIONAL CHILDREN'S ADVOCACY CENTER

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

MAY 16, 1989
WASHINGTON, D.C.

I am Robert E. "Bud" Cramer, Jr., District Attorney of Madison County (Huntsville), Alabama, and President of the National Children's Advocacy Center and National Resource Center on Child Sexual Abuse. I appreciate this opportunity to describe the multidisciplinary response to child sexual abuse as embodied in the National Children's Advocacy Center Program.

First of all, Senator Biden, I would like to commend the Committee on the Judiciary for focusing its attention on the important issue of how child abuse victims are treated in the judicial system. Many changes can and should be made that will improve justice for children in our nation's courts, while preserving the Constitutional Rights of defendants.

I. Circumstances That Led to the Development of the National Children's Advocacy Center

In the spring of 1984, I met with a 12-year-old victim of rape by her father and stepfather, prior to a subpoenaed grand jury appearance. I was faced with a child who would not say a word. From her grandmother, I learned I was the thirteenth professional this child and grandmother had spoken to about her victimization. She had been to the police department, child protective services agency, hospital, lawyers office, and the therapist, often more than once, subjected to multiple interviews and conflicting advice. The child could not handle any more questioning. Not wanting to participate any further in the damage the system response was doing to this child, I sent her and her grandmother home. That day I assigned a member of my staff to be a victim advocate. Her first job was to help this child and grandmother through the intervention process and later through criminal prosecution.

What I realized after listening to the grandmother was that, even with the multidisciplinary review of child abuse cases, which had been going on regularly since 1981, young victims were still being bounced from agency to agency to serve their varying informational needs. In August, 1984, we performed a reenactment of the case of the child and grandmother, before the local Child Sexual Abuse Task Force, formed in Fall 1983, to examine solutions to an epidemic of child sexual abuse reports. The reenactment graphically illustrated the dismal performance of the system response then.

With the challenge, "We are the system, and we can change it," we proposed the establishment of a Children's Advocacy Center, to be located in a house in downtown Huntsville. Its program would be child-focused and multidisciplinary. Agencies participating in the Task Force included the District Attorney's Office, City of Huntsville Police Department, Madison County Sheriff's Department, Madison County DHR, mental health practitioners, medical personnel, and community volunteers. Nine months later, on May 1, 1985, the Children's Advocacy Center opened its doors.

II. The Program

The National Children's Advocacy Center involves child protective services, law enforcement, prosecution, mental health, and other resources in a community response to child abuse, particularly child sexual abuse. Because of the program's effectiveness in meeting the complete needs of the children they serve, the Children's Center has built strong bridges between helping professionals.

By agency agreement, abused children are directed to the Center, a nine-room Victorian frame house that provides a one-stop services center for child victims and their families. There, specially trained professionals conduct interviews, assessments, and treatment. Moreover, the Center is staffed by resource personnel previously unavailable to the child protective services and criminal justice systems, providing an even more beneficial impact on children and families and the previously separate systems responding to them.

Professionals working with child abuse victims through this umbrella program meet weekly and make joint decisions about what actions, if any, to take based upon information from the child and family. This may include removing custody of a child from the family, reuniting a family, prosecution of the offender with recommendations for final disposition, referral for further mental health treatment, etc.

As a result of participation in the program, professionals from different disciplines have developed a more complete understanding and appreciation of each other's systems. This allows them to work more effectively together for the maximum benefit of the child, family, and system.

For instance, in the Children's Center program the decision to prosecute is based on input from many professionals and evaluated by a resource team that includes all disciplines, with priority always placed on the best interests of the child and family. The child's desires are also given serious consideration, as the professionals recognize the decisions they make may significantly affect her or his life. Even after a case is referred for prosecution, the resource team is available to the prosecutor to advise on the ongoing condition and needs of the child.

The work and accomplishments of the Children's Center have been a source of great pride in our local community. It has received numerous awards from local groups and government, as well as state and national recognition. The publicity generated by the Children's Center's cutting edge work for young victims has significantly raised the awareness of the public about the existence and complex nature of child sexual abuse. This adds an additional layer of protection for children by making adults aware of potentially dangerous situations and helping them recognize signs that may indicate a child is being abused.

Even before the Children's Center opened its doors on May 1, 1985, we saw as one of our important missions national advocacy and support for a fundamental change in our society's response to child sexual abuse. Since then, representatives from our program have addressed thousands of people from hundreds of communities at regional, state, and national conferences and at local training sessions. As communities across the United States began to respond to our message by establishing their own Children's Advocacy Centers, we added National to our name to reflect the role of our program as the birthplace of the concept and its national center.

To date their are more than 20 operating Children's Advocacy Centers, and at least 40 additional communities are in the developmental stages. Existing Children's Centers are located in Huntsville, Birmingham, Montgomery, Mobile, Tuscaloosa, and Baldwin County, Alabama; Santa Monica, California; DuPage County and Lake County, Illinois; Honolulu, Hawaii; DeKalb County and Augusta, Georgia; Lawrence County, Pennsylvania; Miami, Florida; Tulsa, Oklahoma; Charleston, South Carolina; Baltimore, Maryland; St. Paul, Minnesota; Memphis, Tennessee; Charlotte and Hendersonville, North Carolina; Pueblo and Colorado

Springs, Colorado; and Canton, Ohio. We are in the process of formalizing a National Network of Children's Advocacy Centers.

A. Goals

The goals of the Children's Advocacy Center Program are similar for all participating agencies and professionals, though their roles and responsibilities in achieving them will differ. The goals are:

- * To provide the child victim and non-offending parent/guardian with interviewing, evaluation, and treatment services at a neutral location in a comfortable environment
- * To prevent trauma to the child caused by multiple interviews and contacts with responding professionals
- * To enhance interagency and case coordination, communication, and cooperation
- * To hold more offenders accountable through improved prosecution of child abuse cases
- * To enhance and refine professional skills necessary to handle sexual and physical abuse cases through ongoing training
- * To assist other communities in establishing their own Children's Advocacy Centers

B. CAC Program Protocol

The Children's Advocacy Center Program operates with written agency agreements by and between the Center, the District Attorney's Office, the City Police Department, and Department of Human Resources. The agreements state that all cases of sexual abuse and serious physical abuse will be referred to the Center. The protocol stipulates that CAC staff will be notified of such reports within twenty-four hours.

Specific procedures agreed to by participating agencies include:

(1) All sexual and serious physical abuse cases will be referred to the CAC within twenty-four hours.

(2) All initial interviews will be conducted jointly by a DHR social worker and law enforcement investigator, including the investigator from the Child Abuse Prosecution Unit in the DA's Office, if needed.

(3) The Clinical Director will be briefed about the interview and when needed will be used in the interview process.

(4) Have the same staff members who conducted the initial interview conduct all subsequent interviews.

(5) Interview and meet with children at the CAC.

(6) Coordinate each step of the investigation process to minimize the number of interviews children are subjected to.

(7) All staff participating in a current investigation will attend case review meetings.

(8) All personnel involved in child abuse investigations will participate in CAC sponsored training.

C. Key Elements of the Children's Advocacy Center Program

There are nine key program elements that comprise the CAC Program model. These elements have been implemented at different times during the development of the Program:

(1) Weekly case review

(2) Designated neutral facility

(3) Joint interview/investigation process

(4) Specialized prosecution unit

(5) Specialized victim advocate assigned to child/family

(6) Immediate mental health treatment for child victim

(7) Medical exam protocol

(8) Court preparation protocol

(9) Regular in-service training program

D. National Resource Center on Child Sexual Abuse

In May, 1988, the National Children's Advocacy Center, in partnership with the Chesapeake Institute of Wheaton, Maryland, was awarded a grant to establish the National Resource Center on Child Sexual Abuse (NRCCSA) by the National Center on Child Abuse and Neglect. The NRCCSA is an information, training, and technical assistance center designed for all professionals working in the field of child sexual abuse. The primary goals of the Resource Center are to advance knowledge and improve skills. The NRCCSA pulls together a vast network of information comprising the expertise of outstanding leaders in the field and provides an array of services that help professionals better respond to, investigate, and manage child sexual victimization cases.

The NRCCSA shares with its parent organizations--The National Children's Advocacy Center and The Chesapeake Institute--a commitment to a child-focused multidisciplinary approach in responding to child sexual abuse. The combined experience, operational and administrative strengths, and national affiliations of these organizations provide a solid foundation for excellence.

The NRCCSA offers state-of-the-art information, consultation, and training to all agencies and personnel involved in protecting children. It also promotes better practices in child sexual abuse prevention and intervention.

- **Information Services**

  NRCCSA's Information Service handles requests from professions for information on child sexual abuse, toll-free, 1-800-KIDS-006. The Resource Center provides ready access to assistance and information from experts around the country.

- **Quarterly Publication**

  Roundtable, a quarterly publication, offers a central ground for open communication. It features an inside look at NRCCSA activities, research book reviews, important developments in the field, letters to the editor, a column on the personal side of working with child abuse cases, etc.

- **Training and Consultation**

  The Resource Center sponsors comprehensive training with recognized national experts and leading professionals. Courses explore practical methods of investigation, management, treatment, and prosecution of child sexual abuse cases. Training and consultation are offered for developing and enhancing the effectiveness of the multidisciplinary approach. A series of lectures and training sessions will cover offender and other specialized treatment. Emphasis will be on the practical aspects of the particular approaches.

- **"Think-Tank" Sessions**

  NRCCSA provides a dynamic forum through its "think tanks," topical dialogues presented by those who have experienced the trauma of child sexual abuse, leading-edge practitioners, and researchers. These sessions examine the state of knowledge and practice in order to foster advances in the field. Reports from each "think tank" will be made available.

Conclusion

As you can probably tell, I am quite proud of the way professionals in Madison County are now responding to cases of child sexual abuse. I also have more detailed material on the Children's Advocacy Center that I would like to enter into the record. Thank you. I would be happy to answer any questions.

The CHAIRMAN. Joe?

STATEMENT OF MR. JOSEPH M. DELL'OLIO

Mr. DELL'OLIO. Thank you. Mr. chairman and members of the Senate Committee on the Judiciary, I appreciate this opportunity to appear before you and present the services offered by CHILD, Inc. of Delaware.

At this time I would like to introduce Mrs. Yvonne Nass, who is behind me. Mrs. Nass for the past 10 years has been one of our parent education instructors and has developed quite a following in this area in Delaware as well as nationally to some degree.

CHILD is a private, nonprofit organization that is dedicated to serving neglected, dependent, abused children, their families, and victims and perpetrators of family violence. It was incorporated in 1963.

Today, we offer the following services. In the area of family violence we provide a full continuum of services to victims and perpetrators of spouse abuse with a 24-hour battered women's hotline, 24-hour counselor advocacy for battered women, a 30-bed shelter for women and their children, victim therapy, children's clinical services at our shelter for battered women, and a men's program for men who batter.

We also operate two children's emergency shelters. At the Governor Terry Shelter and the Franklin Street Shelter we offer protection in emergency temporary shelter to children in the custody or care of the Division of Child Protective Services. We receive these children at any time, day or night.

Through our specialized foster care for delinquent youth, we serve low-risk, nonviolent youngsters in the homes of carefully selected and trained professional foster parents. These are youngsters who otherwise would be in our juvenile correctional institutions.

I will elaborate on other services that we administer. We have been hearing a great deal about the American family in crisis. The model of family life which set the ground rules for our parents somehow seem outdated. Families are struggling for a sense of direction at a time when traditional social roles, norms and values may no longer apply. Increasingly, our children are becoming victims of dysfunctional families. Violence, drug abuse, runaway youth and homelessness are problems ripping apart the fabric of many American families.

Our children spend most of their awake hours in school. It should be no surprise then that the first signs of family conflict or dysfunction are often spotted by school personnel. In a recent study conduced by the Carnegie Foundation for the Advancement of Teaching, teachers cite poor health, abuse, neglect and hunger as problems affecting children in public schools. Underscoring the need for parental involvement and support, teachers complained that parents too often expect the school to provide the emotional support traditionally found in the home. They remind us that teachers are hired to teach, not to parent.

Of course it would be simplistic to blame all of the shortcomings of the American school system on deficient parenting. However, it is becoming clear that the family experience has direct and profound consequences in school. Problems which children have at home do not disappear in the classroom. Rather they carry over, affecting the school's academic performance and compromising he school's ability to educate.

If we are to help our children, we must do it when the problems first appear. We must reach our families before options such as emergency shelter, foster care, group homes or incarceration become necessary. We must help make our schools institutions of learning, not surrogate parents.

In 1983, with a $16,000 grant from the Runaway Youth Act program, we initiated a runaway and homeless youth project in New Castle County, DE. With additional private funds, this program offers a 24-hour hotline for runaways, crisis intervention and counseling, emergency shelter services and family counseling for runaway youth and their families.

Similar to a highly successful CHILD, Inc. program of the early 1970's, which was privately funded, the runaway and homeless youth program works closely with the schools in targeting high risk youth who are experiencing problems at home and who may be in need of immediate counseling or therapy. Enthusiastically received by the schools, this program has helped many children and families confront and work out problems such as real or threatened runaway behavior before they reach crisis proportions.

The most frequent presenting problems and stated reason for referrals include runaway, parent/child conflict, abuse and the youth refusing to go home. Seventy-six percent of all cases reported a family history of dysfunction including drug/alcohol abuse, mental illness and child abuse. Most families served were single-parent families.

In 1988, as a result of direct counseling and outreach efforts, the runaway program reached approximately 1,500 people, with a clear message that the need far exceeds the resources for troubled youth and families in crisis.

For better or for worse, the model that many of us use for parenting is the one that we were exposed to, which is our own parents. If parents are violent or abusive to each other or their children, there is a high probability that their children will continue the cycle as they become parents.

In 1978, CHILD initiated its parent education program through a Federal grant from the National Center on Child Abuse and Neglect. The service is free of charge to parents or future parents including high school students, helping them to become more effective parents or preparing them for child rearing.

The program operates at various community and agency locations through Delaware and is available to anyone wishing to participate. Workshops in parenting skills are offered in the high schools and in job skill training programs for youth. Here the emphasis is on reaching adolescents before they become parents and educate them for the important role that many will eventually assume.

Special courses are also offered to adolescent parents at various school and agency settings to meet the special needs of this high risk population. In addition to our basic parenting course, we also offer two courses for parents of teens. The 10-week course, Understanding Adolescents, is for parents who want to learn more about that sage of development. The second course is a 12-week course, Parents of Troubled Teens. This course has been developed for parents of adolescents with social or emotional problems, school problems, behavioral problems or involvement with substance abuse. A day care curriculum was developed to met the special parenting needs of parents with children up to 5 years of age.

Another outreach project developed to serve a high risk problem was a 6-week curriculum addressing the needs of teen mothers with premature babies. This project was developed in collaboration with the Medical Center of Delaware's child development watch program. Specifically, this target group consists of young girls 13 to 18 years of age.

A parenting curriculum was developed to address the special needs of sheltered and institutionalized parents. All parent education courses are taught in both English and Spanish. Free babysitting is provided.

According to an independent evaluation the parented program has demonstrated a 95 percent positive change in parental attitudes and behaviors by its graduates.

We also have a home visitors program which was initiated in 1984 as an adjunct to the parented program. We received Federal, National Center on Child Abuse and Neglect funds the following year, enabling us to make this program statewide. Usually clients find the home visitor program less threatening than a DCPS worker, because with a DCPS worker there is always the fear of the children being removed from the home.

A recent independent evaluation of this program concluded that 78 percent of its participants noted positive changes in their parental attitudes after receiving this service.

CHILD has also been involved in family advocacy. Since 1973 we have played a major role in helping to reform systems that service children and families in Delaware. One of our greatest successes is the creation of the Delaware Department of Services for Children, Youth and their Families. Child protective, juvenile correctional, juvenile mental health, and juvenile probation services were merged into this department in 1984. The creation of the Children's Department was one of the key objectives of Speak Out for Youth, a federally funded project. This began in July of 1980 and ended in August of 1983.

Another major objective was he creation of the Division of Child Protective Services, which was accomplished in 1982. For the first time the responsibility for services to children are under one person, a cabinet-level secretary. The buck stops there. Hopefully, the fragmentation, overlapping and gaps in the continuity of service to children and their families will be identified and remedied. Children no longer ping pong from one State to another as they did under the previous system. We can now emphasize a holistic approach for serving children instead of the counterproductive practice of labeling them. We can also work with families in a more comprehensive way.

We are appreciative of the Federal funds that we have received in the past and the present. We are also grateful to our legislative and executive branches of government for having continued most of these programs with State funds.

In conclusion, I respectfully recommend the following for your consideration.

First, the Federal Government should continue its very important role of providing initiation of start-up funds for innovative programs that reduce child abuse and family violence.

Second, Federal funds for these projects should be funneled through State criminal and juvenile justice councils whose functions are planning, grant management and monitoring. These agencies are objective in their distribution of funds because of the balance of their supervisory board membership. In Delaware it is called the Criminal Justice Council.

Third, the victims of Crime Act funds should be expanded to include clinical counseling services to suspected victims of child abuse referred by elementary, middle and high school personnel. These funds should be directed to private agencies. Families at risk are less threatening and more inclined to cooperate with private sector.

Fourth, the Runaway and Homeless Youth Act funds currently administered by the U.S. Department of Health and Human Services should not only be continued but increased.

Fifth, the management design of governmental agencies that direct services for victims of child abuse, child mental health, juvenile correctional, and to their families should be structured so that these clients do not fall through the cracks of governmental agencies. The approach to service delivery should be comprehensive, especially for the multiproblem family.

Further, these agencies should be regularly evaluated and monitored by an outside source for performance of service delivery, cost effectiveness and accountability.

And, finally, more efforts should be placed on services that prevent child abuse and family violence such as parent education and home visitors.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Dell'Olio follows:]

child

CHILD, INC.
507 PHILADELPHIA PIKE
WILMINGTON,
DELAWARE
19809-2177
TELEPHONE
(302) 762-8989

Testimony of Joseph M. Dell'Olio

Executive Vice President

CHILD, INC.

before

THE

UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

Washington, D.C.

May 16, 1989

CHILD, Inc.

Services to Child Abuse Victims

Mr. Chairman and Members of the United States Senate Committee on the Judiciary, I appreciate this opportunity to appear before you and present the services offered by CHILD, Inc.

CHILD, Inc. is a private, non-profit organization dedicated to serving neglected/dependent, abused children, their families, victims and perpetrators of family violence. It was incorporated in 1963 as the Boy's Home of Delaware. Currently, CHILD offers the following services:

Family Violence Program: Offers the full continuum of services to victims and perpetrators of family violence;

a. 24-hour Hotline (762-6110)

b. Counselor-Advocacy

   1) 24-hour emergency services and crisis intervention counseling
   2) Related service brokering

c. Emergency Shelter service for women and children who are victims of family violence

   1) Emergency 30-bed shelter facility - 30 day program
   2) On-site counseling and transitional counseling preparing residents for return to the community

d. Children's Program providing assessment, referral, crisis counseling and constructive non-violent activities for children and mothers at the Shelter

e. Men's Program (for Men Who Batter)

   1) On-call 24-hour/crisis intervention counseling
   2) Individual and group counseling

Victim Therapy: Provides individual and group counseling/therapy to female victims of relationship violence. The primary goal of the program is to aid in the successful adjustment of the person who has been victimized, including the prevention of further victimization.

Children's Emergency Shelters: At the Governor Charles L. Terry, Jr. and Franklin Street Emergency Shelters, CHILD offers protection and emergency temporary shelter to children in the custody or care of the Division of Child Protective Services (DCPS) receiving children at any time, day or night.

Specialized Foster Care for delinquent Youth: Low-risk, non-violent delinquent youth are placed in the homes of carefully selected and trained professional foster parents.

Four other Programs that CHILD, Inc. administers, which I will cover in more detail are:

- Runaway Youth
- Parent Education
- Home Visitor
- Child and Family Advocacy

Runaway and Homeless Youth Program

Recently we have been hearing a great deal about the American family "in crisis." The model of family life which set the ground rules for our grandparents somehow seems outdated. Families are struggling for a sense of direction at a time when traditional social roles, norms and values may no longer apply. Increasingly, our children are becoming victims of dysfunctional families. Violence, drug abuse, runaway youth and homelessness are problems ripping apart the fabric of many American families.

Our children spend most of their waking hours in school. It should be no surprise then that the first signs of family conflict or dysfunction are often spotted by school personnel. In a recent study conducted by the Carnegie Foundation for the Advancement of Teaching, teachers cited poor health, abuse, neglect and hunger as problems affecting children in public schools. Underscoring the need for parental involvement and support, teachers complain that parents too often expect the school to provide the emotional support traditionally found in the home. they remind us that teachers are hired to teach, not to parent.

It would be simplistic to blame all the shortcomings of the American school system on deficient parenting. However, it is becoming clear that the family experience has direct and profound consequences in school. Problems which children have at home do not disappear in the classroom. Rather they carry over, affecting the child's academic performance and compromising the school's ability to educate.

Failure at school may result in poor grades, suspension or expulsion. Outside of school, the outcome of family conflict or stress may be more serious. Small family quarrels can erupt into serious altercations. Running away or breaking the law may seem to be the last and only resort for many youngsters.

Recent statistics indicate an alarming trend. From 1985 to 1987, the number of youths held on alcohol/drug offenses jumped 60% and for offenses against persons the number increased 50% over the same time period. Despite an overall juvenile population decline there were 53,503 juveniles held in public facilities on February 2, 1987, 10% more than in 1983.

The population of runaway and throwaway children (children kicked out of the homes and refused readmittance) is growing at a disturbing rate. The added risk of AIDS amplifies the urgency and seriousness of the societal crisis.

The soaring number of repeat youth offenders should also sound an alarm. It is all too easy to become helplessly entangled in the juvenile correctional system. The stigma of being in or having been in the system compounds the problem. By the time of release a pattern of delinquent behavior may have been reinforced rather than altered.

If we are to help our children, we must do it when problems first appear. We must reach our families before options such as emergency shelter, foster care, group homes, or incarceration become necessary. We must help make our schools institutions of learning, not surrogate parents.

Between 1973 and 1976, CHILD, Inc. provided intensive, home-based family counseling. Privately funded, the program received referrals from school personnel and reached youngsters and their families early, before the problems became critical. The success of the program was impressive. Eighty percent (80%) of youth receiving services were maintained with their families, saved from out of home placement.

In 1983, with $16,423 in federal funds from the "Runaway Youth Act" of the U.S. Department of Health and Human Services, we initiated our Runaway and Homeless Youth Project (formerly known as First Base) in New Castle County, Delaware. With additional private funds, this program offers a 24-hour hotline for runaways, crisis intervention counseling, emergency shelter services, and family counseling to the runaway youth and their families.

Similar to the CHILD, Inc. program of the early 1970's, the Runaway and Homeless Youth Program works closely with the schools in targeting high risk youth who are experiencing problems at home and who may be in need of immediate counseling or therapy. Enthusiastically received by the schools, this program has helped many children and families confront and work out problems, such as real or threatened runaway behavior, before they reach crisis proportions.

Examples of the problems that schools experience and of the enthusiasm for our services are reflected in the letters that we receive from local high schools personnel. (See Attachment B).

The CHILD, Inc. Runaway and Homeless Youth Project operated in calendar year 1988 with $20,667 in continuation funds from the U.S. Department of Health and Human Services and additional private funds of $18,958 for a total calendar year 1988 budget of $39,625.

Outreach services to troubled youth within the community schools has continued to expand since 1987. The Newark High school and New Castle Middle School have each been the site of a full day per week of individual, group, crisis intervention counseling, and consultation with school staff. Short-term crisis intervention and on-call crisis intervention were utilized by 13 high schools, 10 middle schools and 9 elementary schools in New Castle County. Many were self-referrals, as well as referrals from school staff who were aware of a child's threat to runaway, reported abuse, etc. Many of these schools have made requests for counseling programs similar to those at Newark High School and New Castle Middle School. Both Newark High School and New Castle Middle School faculty and Vice Principals have expressed a need to have a crisis intervention program such as ours available in each school five days a week.

Another very important component of the runaway program has been the preventive and aftercare counseling to youth and families. Many families have used evening counseling sessions to mediate family tensions and avert runaway episodes.

The most frequent presenting problems and stated reason for referrals include: runaway, parent/child conflict, abuse and the youth refusing to go home. Seventy-six percent (76%) of all cases reported a family history of dysfunction including drug/alcohol abuse, mental illness and child abuse. Most families served were single parent families.

1988 Statistics Include:

123 Hotline Calls
3 Self-referred runaways were sheltered at Franklin Street Emergency Shelter for Adolescents
205 Counseling cases were opened
334 Clients received counseling services
684 Counseling sessions were provided including:

  536 individual sessions
  128 family counseling sessions
  20 group counseling sessions

32 Schools were reached through outreach or presentations

Thirty-three community and public speaking presentations have reached over 823 children and adults as well as 2 local radio audiences. Specific audiences included students, school faculties, parent groups, Girl Scout Troop leaders, University of Delaware students, and the DuPont Company safety meetings.

As a result of direct counseling and outreach efforts, the runaway program has reached approximately 1500 people, with a clear message that the need far exceeds the resources for troubled youth and families in crisis.

Parent Education Program

For better or for worse, the model that many of us use for parenting is the one that we were exposed to, which is our parents. If parents are violent or abusive to each other or their children, there is a high probability that their children will continue this cycle as they become parents.

Today, we train people for just about every job available except for the most important job of all -- parenting.

In 1978, CHILD, Inc. initiated it's Parent Education Program through a grant from the National Center on Child Abuse & Neglect (NCCAN), U.S. Department of Health and Human Services. The service is free of charge to parents or future parents including high school students, helping them to become more effective parents or preparing them for child rearing.

The following topics are included in our basic 20 hour curriculum:

- Family Communications: Listening Skills
- Family Communications: Confrontational Skills
- Resolving Conflicts
- Stress
- Expressing Emotions
- Redirecting Children's Misbehavior
- Strengthening the Parent/Child Relationship
- Discipline Skills
- Child Development
- Substance Abuse (Education)
- AIDS Education (beginning in July, 1989)

The program operates at various community and agency locations throughout Delaware and is available to anyone wishing to participate. Referrals come from public and private agencies such as hospitals, churches, schools, public health, DCPS, Family Court and human service agencies (please refer to Attachment A - Parent Education Sites).

In addition to the ongoing community site classes, the program is also offered at various agency sites where it is presented as an adjunct to an agency's ongoing activities and is directed to the needs of high-risk, abusive/neglectful clients.

This outreach effort is aimed at preventing the occurrence of abuse or neglect.

The curriculum includes the following: building self-esteem, increasing knowledge of child development and parenting skills, encouraging parent/child bonding and increasing understanding of the special needs of premature babies.

A parenting curriculum entitled "Building on Family Strenghts in Times of Crisis" was developed to address the special needs of sheltered and institutionalized parents.

The goal is to prevent child abuse and neglect as well as providing an emotional support system for both sheltered parents and their children. The course topics include: helping empower parents to deal positively with their children in a sheltered situation; addressing the emotional concerns of parents and children; teaching parenting skills that will build parental self-esteem and improve the parent/child relationship.

All Parent Education courses are taught in both English and Spanish - free baby sitting is provided.

According to an independent evaluation, the Parent Education program has demonstrated a 95% positive change in parental attitudes and behaviors by it's graduates.

In 1988, 3,266 individuals were served through our program. Currently, the Parent Education Program is funded by the Delaware Department of Services for Children, Youth and Their Families (DSCYF), State Grant-in-Aid, The Criminal Justice Council and private funds.

The curriculum includes the following: building self-esteem, increasing knowledge of child development and parenting skills, encouraging parent/child bonding and increasing understanding of the special needs of premature babies.

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In 1988, 3,266 individuals were served through our program. Currently, the Parent Education Program is funded by the Delaware Department of Services for Children, Youth and Their Families (DSCYF), State Grant-in-Aid, The Criminal Justice Council and private funds.

Home Visitor Program

The Home Visitor Program was initiated, with limited funds, in 1984 as an adjunct to the Parent Education Program. It is an outreach effort to make individual home visits to multi-problem families who may not be able to attend a parent education class or who would be better served on an individual basis. The program provides peer-friend support and individualized instruction in parent education and family living skills. The instruction includes: family communication, resolving conflicts, redirecting children's misbehavior, discipline, stress, dealing with emotions, child development, changes affecting the family, strengthening the parent/child relationship, budgeting and nutrition. The home visitor first establishes a relationship of trust with the family and then provides training in the areas in which the family has the most need. Usually clients find the home visitor less threatening than a DCPS worker because with a DCPS worker there is always the fear of the child(ren) being removed from the home.

Material presented to clients is the basic 20-hour Parent Education Curriculum, and if appropriate, a specialized curriculum such as "Understanding Adolescents" or "Parents of Troubled Teens". They may also be taught the curriculum on Child Abuse and Neglect, Home Management, Budgeting, Nutrition, Dealing with Children and School, Drug and Alcohol Abuse and help for Single Parent Families.

Goals of the Program:

The primary goal is to help troubled, abusive or neglectful families change their pattern of behavior toward their children to one which will enable them to live as a healthy, functioning family unit.

Subsidiary goals include:

- High risk situations are neutralized;
- Child rearing techniques improved;
- Parents develop the ability to trust and to establish support systems within the community;
- Improvement of parents self-esteem;

- The parents learn skills that will help them deal with stressful situations; and
- Decrease in the number of incidents of child abuse and neglect.

In 1988, a total of 118 families were served by this program.

A recent independent evaluation of this program concluded that 78% of it's participants noted changes in their parental attitudes after receiving this service. Eighty-nine (89%) percent said that they "know more about child-raising since the beginning" of this service.

In 1984, the Home Visitor Program received a boost and became Statewide with Federal Funds through the NCCAN, DHHS. Currently it is funded through contracts with the Department of services for Children, Youth and Their Families (DSCYF) and Federal Community Services Block Grant funds administered by the Delaware Department of Community Affairs.

A training manual for the Home Visitors and Parent Education Program is available.

Child and Family Advocacy

Since 1973, CHILD, Inc. has played a major role in helping to reform systems that serve children and families in Delaware. One of our greatest successes is the creation of the Delaware Department of Services for Children, Youth and Their Families. Child Protective, juvenile correctional, juvenile mental health, and juvenile probation services were merged into this Department in July, 1984.

The creation of the Department was one of the key objectives of Speak Out For Youth (SOY), a project funded by O.J.J.D.P. of the U.S. Department of Justice which started in July, 1980, and ended on August 31, 1983. Another major objective was the creation of the Division of Child Protective Services which was accomplished in 1982. SOY consisted of a consortium of three private, non-profit organizations: CHILD, Inc., Delaware Council on Crime and Justice, Inc. and the Community Legal Aid Society, Inc. CHILD, Inc. administered this project.

A comprehensive Department serving children and their families had been recommended in Delaware by various study groups and commissions for over a decade. Because of bureaucratic inertia and "turf protecting", creation of this Department was elusive.

Considerable impetus for this change came about because of the dedicated efforts of a bipartisan Senate Committee on Services to Children and Youth and an unfortunate series of fatal cases of child abuse and/or neglect.

While we should not delude ourselves into thinking that the Department of Services for Children, Youth and Their Families is the "end all - cure all" in child protective, juvenile correctional and mental health services to children, there are, however, some things that we can expect with this improved management design.

For the first time the responsibility for these services are under one person - a cabinet level Secretary. "The buck stops there."

- Hopefully, the fragmentation, overlapping and gaps in the continuity of services to children and their families will be identified and remedied.

- Children no longer fall through the cracks of governmental agencies as they did before.

- Children no longer "ping-pong" from agency to agency as they did under the previous system.

- A youngster who enters the system as an abused or neglected child may be found to have a myriad of other problems which require mental or correctional services. We are now in a position to plan in a comprehensive way for these multiple-problemed youngsters and offer the services that are needed.

- We can now emphasize a wholistic approach for serving children instead of the counter-productive practice of labeling them.

- We can now expect a fuller implementation of the family treatment methods that we have long espoused but less frequently practiced.

- Perhaps now, we can focus more on prevention - working more with the family, preventing people from coming into the system - preventing costly institutional care.

CHILD, Inc. is appreciative of the Federal Funds that it has received in the past and present. The following programs were initiated with these funds:

- Franklin Street Emergency Shelter, Parent Education, Family Violence, Family Violence Children's Program, Speak Out For Youth, Home Visitors, Specialized Foster Care for Delinquent Youth, Runaway and Homeless Youth Networking Grant.

Currently we are receiving Federal Funds for:

- Runaway and Homeless Youth Program

- Victim Therapy (Victims of Crime Funds - Department of Justice)

- Transitional Counseling (Domestic Violence Program - Department of Health and Human Services)

We are also grateful to the Delaware Legislative and Executive Branches of Government for having continued most of these programs with state funds.

In conclusion, I respectfully recommend the following for your consideration:

1. The Federal Government should continue it's very important role of providing initiation or "start-up funds" for victims of child abuse and family violence.

2. Federal Funds for these projects should be funneled through State Criminal and Juvenile Justice Councils whose functions are planning, grant management and monitoring. These agencies are objective in the distribution of funds because of the balance of their supervisory board membership. In Delaware it is called the Criminal Justice Council.

3. "Victims of Crime Act" funds should be expanded to include clinical counseling services to suspected victims of child abuse referred by elementary, middle and high school personnel. These funds should be directed to private (not governmental) agencies. Families at-risk are less threatened and more inclined to cooperate with private sector agencies.

4. Runaway and Homeless Youth Act funds, currently administered by the U.S. Department of Health and Human Services, should not only be continued, but increased.

5. The management design of governmental agencies that provide direct services for victims of child abuse, child mental health, juvenile correctional, and to their families should be structured so that these clients do not fall through the cracks of governmental agencies. The approach to service delivery should be comprehensive, especially for the multi-problemed family.

   Further, these agencies should be regularly evaluated and monitored by an outside source for performance of service delivery, cost effectiveness and accountability.

6. More emphasis should be placed on services that prevent child abuse and family violence such as parent education and home visitors.

Programs for drug rehabilitation, emergency housing/shelter and corrections represents an important moral obligation for any community. They are also reminders that we were not there for our children when they first called out for help. Are we prepared to shrug off the family in crisis as a casualty of the 20th century? Or, will we understand that our children are our most valuable resource? An investment in their future assures the future of us all.

Attachment A

Parent Education Sites

- Community Sites:

  - Asbury United Methodist Church - New Castle
  - Brandywine YMCA
  - Central YMCA
  - Claymont Community Center - Claymont
  - Hudson State Service Center - Newark
  - Presbyterian Church of Dover - Dover
  - Pencader Presbyterian Church - Glasgow
  - West Presbyterian Church - Wilmington
  - Westminster Presbyterian Church - Wilmington
  - James Williams State Service Center - Dover
  - MOT Community Action Center - Middletown

- Agency Sites:

  - Aldersgate United Methodist Church - parents of adolescents
  - Family Violence Shelter - clients
  - New Castle County Speech and Hearing Clinics - clients and staff
  - YWCA Woman Power - clients
  - Wilmington Montessori Association - parents/staff
  - Fraim Boys Club - parents of teens
  - Church of Good Shepherd - Adoptive Parents
  - Jenny Wren Day Care - parents of children 0-5
  - Nanticoke Hospital Day Care - Parents of children 0-5
  - Mifflin Meadows - poverty level
  - Liberty Court - poverty level
  - Whatcoat Shelter - poverty level/homeless
  - Hockessin United Methodist - parents of adolescents
  - Care-A-Lot - Woodside - parents of children 0-5
  - Little Red Hen - Delmar - parents of children 0-5
  - Village Square Day Care - parents of children 0-5
  - Smyrna Day Care - parents of children 0-5
  - Playhouse Nursery - parents of children 0-5
  - All-About-Me Day Care - parents of children 0-5
  - Kingswood Community Center- low income parents
  - Delaware State Library - parents
  - Village Square Day Care - parents of children 0-5

Attachment A

- Agency Sites, cont'd:

  Delmarva Rural Ministries - migrant workers - poverty level
  Wesley Pre-School - parents of children 0-5
  Kent General Hospital - parents
  Lowan Pitts Day Care - parents of children 0-5
  Kent VoTech - North - adolescent parents
  Kent VoTech - Woodside - adolescent parents
  Rose Hill Head Start - parents
  Holy Cross Church - parents
  P.S. duPont Elementary School - parents
  Calvary Baptist Church - parents
  Dover Educational & Community Center Day Care - parents of children 0-5
  Manchester Square - Dover Housing parents
  Simonds Circle - Dover Housing parents
  Women's Correctional Institution - inmates
  Carrie Downie Elementary School - parents
  Public Health Nurses - staff
  Career Exploration Program - adolescent parents
  The Girls Club - teens
  Skateworld Day Care Center - Laurel - parents of children 0-5
  Georgetown Day Care Center - parents of children 0-5
  D.A.P.I. - Kent and New Castle Counties - adolescent parents
  Latin American Community Center - Hispanic parents
  PDDEN Center - new parents
  Crossroads Community Center - parents in transition
  Wilmington Skills Center - 70,001 Project - teens
  Forwood Elementary School - parents

- School Sites:

  Tower Hill School
  Delaware Technical and Community College
  Wilmington Montessori

Attachment A

- Special Workshops Were Conducted at:

  Foster Grandparents - Dover
  Delaware Technical and Community College
  Glasgow High School
  VoTech - West - Dover
  Chapter I - McCullough School
  Division of Youth Rehabilitative Services
  Colonial School District
  Kent General Hospital - Dover
  Delaware State Library - Dover
  People's Settlement Place
  Criminal Justice Council
  Walnut Street YMCA
  Brandywine YMCA
  Gauger Middle School
  Goldey Beacom Business Training
  Newark High School
  Tower Hill
  Wilmington Montessori
  Child Care Connection - Milford
  Sussex County Day Care
  Hockessin Methodist Youth Group
  Latin American Community Center
  New Castle County Head Start
  Whatcoat Methodist Church - Dover
  Mt. Pleasant Elementary School
  CONTACT of Delaware
  The Girls Club
  Sheraton Hotel - Dover
  James Williams State Service Center - Dover
  Head Start - Star Hill - Dover
  Kemblesville (PA) United Methodist Church
  Aldersgate United Methodist Church
  DuPont Experimental Station
  Silverbrook Day Care

ATTACHMENT B

DELCASTLE
TECHNICAL HIGH SCHOOL

1417 NEWPORT ROAD WILMINGTON, DELAWARE [illegible]
[illegible]
JOSEPH M DEARDORFF, Principal

October 27, 1988

Mr. Joseph Dell'Olio, Director
Child, Inc.
1300 W. 7th Street
Wilmington, DE 19805

Dear Mr. Dell'Olio;

In September when Sue Biggs introduced the Delcastle Guidance staff to Mary Milroy, her successor, our staff was impressed at once by her demeanor, her statement of goals, and the scope of her experience in the field. Having worked closely with Sue, who always responded to the variety of emergencies at Delcastle Technical High School, I was saddened to see her leave the area.

However, on that day, Mary not only addressed our group but after learning of a suspected sexual abuse case involving a female student, spent the balance of the morning handling this case and its' complexities. On subsequent days when I contacted Child, Inc. regarding runaways, Mary's professionalism has been invaluable. I cite below eight separate cases for which I am grateful. In the past month Mary Melroy has made a real difference in the lives of these teenagers and their families:

Sally* Possible sexual abuse, reunited with other parent.

Michele,* Runaway reunited with parents. Threesome in counseling.

Mary Lou.* Teen parent living with addicted parent in constant fear of eviction.

Gracie.* "Throw-away" teen. Moved in with a friend. History of family violence, drugs, murder, crime.

Ted.* Runaway from physical, psychological abuse of a parent; reunited with grandparent until abusive parent begins therapy.

Mary.* Girlfriend of a runaway: contemplating running.

Pattie.* Suspected pregnancy; ran away; placed with aunt until family issues are dealt with.

Leon.* Contemplating running away from neglectful home environment.

In conclusion, Mary Milroy is a dynamic individual who relates equally to males and females, a quality we need at Delcastle Technical High School.

I have enclosed a segment of a memorandum to the New Castle County Vo Tech School District's Assistant Superintendent outlining our needs in Guidance due to the severity of cases here. We are most anxious to have the expertise of Mary Milroy here on a regular weekly basis.

Sincerely,

Lois J. Dennis
Guidance Counselor

---

* Names have been changed

DELCASTLE TECHNICAL HIGH SCHOOL

MEMORANDUM

TO: Dr. Dennis Loftus, Assistant Superintendent

FROM: Judith A. Calhoun, Assistant Principal Jac

DATE: October 17, 1988

TOPIC: Delcastle Guidance Program

Our Guidance Department has needed additional staff for several years. This need is now critical for the following reasons:

1) The number of "at risk" students has increased. In the six weeks since school has opened, we have dealt with an unusually high number of severe student problems.

Suicide - five students with a history of attempts, one currently hospitalized from an attempt last week.

Abuse/Neglect - seven cases reported to Child Protective Services.

Runaway - nine cases of students who have run away or been shut out of their homes.

Pregnancy - currently thirteen plus ten students who are already parents.

Substance Abuse - two students plus four students whose parents are abusers.

Serious Emotional Problems - four, one of whom is anorexic.

It takes a counselor from two to twelve hours of work time to initiate action in these cases and of course the problems do not clear up immediately. Some of them are so involved that two support agencies and the police have to be called in for help. In many of the cases, there is no family support system to assist us.

DELCASTLE
TECHNICAL HIGH SCHOOL

1417 NEWPORT ROAD WILMINGTON, DELAWARE 19804
995-8100
JOSEPH M. DEARDORFF, Principal

April 28, 1989

Mr. Joseph M. Dell'Olio, Executive Director
Child, Inc.
507 Philadelphia Pike
Wilmington, Delaware 19809-2177

Dear Mr. Dell'Olio,

I am writing in support of your agency's outreach program in local high schools. In the five years I have been Director of Guidance here at Delcastle we have had excellent service from your organization.

We have come to rely on your staff for our students who are in trouble at home and have never been disappointed by your agency. I shudder to think what we would do without these very capable case workers.

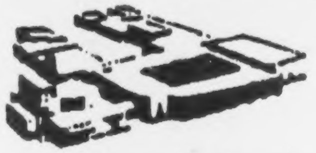
In particular, Ms. Mary Milroy has done a spectacular job in support of our guidance staff this year. Her down-to-earth approach and unflappable manner, along with her competence, have endeared her to our staff.

I'll just close by saying, "THANK YOU, THANK YOU, THANK YOU", Child, Inc.

Yours truly,
Judith A. Calhoun
Judith A. Calhoun, Ed.D

Attachment B

DELCASTLE
TECHNICAL HIGH SCHOOL



1417 NEWPORT ROAD WILMINGTON, DELAWARE 19804
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I am writing in support of your agency's outreach program in local high schools. In the five years I have been Director of Guidance here at Delcastle we have had excellent service from your organization.

We have come to rely on your staff for our students who are in trouble at home and have never been disappointed by your agency. I shudder to think what we would do without these very capable case workers.

In particular, Ms. Mary Milroy has done a spectacular job in support of our guidance staff this year. Her down-to-earth approach and unflappable manner, along with her competence, have endeared her to our staff.

I'll just close by saying, "THANK YOU, THANK YOU, THANK YOU", Child, Inc.

Yours truly,

Judith A. Calhoun

child

CHILD, INC.
507 PHILADELPHIA PIKE
WILMINGTON,
DELAWARE
19809-2177
TELEPHONE
(302) 762-8989

June 12, 1989

Senator Joseph R. Biden, Jr.
Room 221
Russell Building
Washington, DC 20510

Dear Senator Biden:

Thank you for the opportunity to testify before the Senate Committee on the Judiciary on May 16, 1989, and for your letter of May 18, 1989.

In that letter you ask two questions. Those questions and my responses follow:

1. What sorts of abuse, neglect, delinquent, familial or other patterns have you noticed in the population of children who come through your shelters?

In calendar year 1988, at the Governor Charles L. Terry, Jr. Shelter, which serves primarily younger children in the care or custody of the Division of Child Protective Services the legal status of the children sheltered as defined by the Division of Child Protective Services was:

. abused	4
. dependent	112
. neglected	6
. unknown	4

This represents a total of 126 youngsters sheltered.

The average age of the youngsters sheltered was 11.75 years with the youngest at 6 months of age and the oldest 17 years. The average stay was 15 days, however, one child was in shelter 65 days. Parent/child conflicts accounted for 26 placements. Runaways (from home) accounted for 26 placements. At least 12 children were received because their parents (usually mother) were homeless.

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Branch Offices: Drummond Plaza Office Park, Suite 2201 A-Building 2, 1423 Capitol Trail, Newark, DE 19711-5726
VEPCO Industrial Park, South Caesar Rodney Avenue, Camden, DE 19934-1112

During calendar year 1988, the Franklin Street Emergency Shelter, which primarily serves adolescents 12-17 years of age, received 129 youngsters.

Their legal status as defined by the Division of Child Protective Services when admitted was:

. abused	13
. dependent	107
. dependent/neglected	1
. dependent/abused	3
. neglected	4
. unknown	1
This represents a total of	129 youngsters sheltered.

The average age of youngsters sheltered was 15.5 years with the youngest at 8 years of age and the oldest 17 years. The average length of stay was 16.7 days with one child who was sheltered for 108 days. Parent/child conflicts accounted for 30 placements. Runaways (from home) numbered 40.

The majority of the youngsters served at both shelters (59%) were female.

In Delaware, delinquent children generally are not mixed in any residential facility with dependent, neglected or abused children unless the state officials agree to accept responsibility for such mixing. This is a result of legislation which was enacted in 1987. CHILD, Inc. aggressively advocated for this legislation.(Delaware Code, Title 10, Chapter 9, Subsection 937 A, E and Title 29, Chapter 90, Subsections 9003 (11),(14)).

Parent/child conflicts have been on the rise; however, it is best that these issues are resolved by the social service and not the correctional system. Earlier intervention, prior to Division of Child Protective Services involvement, is the ideal as stated in pages 3-5 of my testimony.

The number of children running away from home in Delaware has more than tripled from 1986 to 1988. An improved reporting system through the Delaware Missing Children Information Clearinghouse (under the Delaware State Police) was implemented in 1986. Better reporting and maintenance of information may account for some of the increase.

As in other states, the children from homeless families have a high probability for referral to Child Protective Services. We receive them as "dependent children".

More detailed shelter reports are issued every six months and are available on request.

Your second question and my response follow:

2. Are there any special features of Delaware law that you believe are particularly positive in responding to the problem of child abuse?

The Delaware Child Abuse law (Delaware Code, Title 16, Chapter 9, Section 901-909) is positive and probably similar to child abuse legislation in most states.

We have another law in Delaware which is unique and helpful in family violence cases. Properly applied, it can be helpful in child abuse cases. It is called the "Imperiling the Family Relationship Statute" and is a civil (not a criminal) remedy. It offers Family Court Judges considerable latitude for getting help for the family.

The law states, "In an action to prevent family members from conduct that imperils the family relationship, (the judge may) order the defendent to desist from the acts complained of, or order individual or family counseling with the court staff or any appropriate counseling agency, or enter such other order as may be required." (Chapter 10, Delaware Code Section 950 (5).)

In 1979 Delaware deinstitutionalized its status offenders, therefore since that time, children who are runaways, truant or "uncontrollable", are no longer referred to the juvenile correctional system but to Child Protective Services. This is a positive feature and has dramatically decreased our juvenile correctional population.

I would like to take this opportunity to express a major concern that many of us in the field of child welfare have been wrestling with.

One of the major crises currently facing the Child Welfare System in Delaware (as well as nationally) is the increasing difficulty in attracting and retaining qualified workers.

Graduate social work training is probably the best academic preparation for the field of Child Welfare (Masters of Social Work Degree) available today.

Senator Joseph R. Biden, Jr.
June 12, 1989

Fewer individuals with Masters of Social Work Degrees are entering the Child Welfare System because it is not as financially rewarding as other aspects of social work and perhaps more demanding.

Most recently, there has been a heavy emphasis in directing Masters of Social Work students into clincial social work and providing very little exposure to the public child welfare systems (child protective services).

The effects of this are beginning to create a system where masters level social workers conduct the therapy while less qualified bachelors level graduates are servicing public child protective agencies. The degree of professional training and competence is equally important in this area because these are the individuals who must deal with crisis situations on a day-to-day basis. They are the ones who often make those life or death decisions about the child, trying to determine whether or not that youngster should remain or be removed from his or her family.

Some possible solutions are:

- Increase availability of graduate school fellowships which would be followed by a committment to work in child protective services.

- Making salaries of child protective services workers with Masters of Social Work Degrees at least comparable to other clinical practice settings.

- Establishing career ladders whereby qualified clinically trained social workers may remain in direct services instead of being forced to move into supervision or administration.

- Increasing direct service personnel so that caseloads are manageable.

- Assign less trained personnel to conduct the day-to-day tasks such as transporting children to and from appointments, obtaining school records, etc.

In conclusion, I thank you again for your interest in this important area of Child Welfare. I am available to assist in any way possible.

Sincerely yours,

Joseph M. Dell'Olio

Joseph M. Dell'Olio
Executive Vice-President

JMD/ra

The CHAIRMAN. Judge?

STATEMENT OF JUDGE TOM McDONALD

Judge McDONALD. Mr. Chairman, thank you for the invitation to be with you today. I would like to commend you and the committee for your initiative and the conduct of this hearing. All frequently, the special children about whom we have talked today are further victimized by a system which is supposed to protect them. Your leadership can go a long way toward alleviating the awful tragedy of child abuse.

As we have heard today, appearing in court can be an intimidating experience for any adult. For a child, then, intimidation is magnified a hundredfold. I see the terror and fear in their eyes every single day when they appear in my court. Being removed from home and placed into the hands of the judicial system is a frightening experience for any child. Unfortunately, the child welfare system all too often does not work in their best interest.

I was one of the lucky ones. The system did work for me when as a very young child I was adopted by wonderful, loving parents. I can assure you, however, that if the system had treated me the way it does some of the children who now appear before me, I would not be here before you today. I would be on the other side of the bench, possibly behind bars.

Let me give you an example, if I could, of how the system does, in fact, break down. In 1984, in my hometown of Louisville, KY, authorities found 9-year-old Eugene lying on a cot in the back room of a State foster home. He was 9 years old and weighed only 17 pounds, the same weight as he weighed when he had been brought into the foster care system 7 years earlier. This child was in the court system, under the State's care, and he literally nearly starved to death.

We don't have to travel to Third World countries to see starving children. They are starving in our own backyards and under the auspices of the State.

When I first took the bench, in 1983, I saw 10-year-old children who had never spent Christmas with the same family twice. I saw teenagers who had been moved around so many times they had never been able to complete a single grade of school with the same teacher. What kind of education can we expect these children to have.

Last year, I conducted hearings at which it was revealed that an 11-year-old boy was placed in a psychiatric institution for 72 days, supposedly because the State had no other place to keep him. Two things were very interesting about that case. One, on the date of his admission to the hospital the doctors and the entire treatment team who examined him found that there was no medical reason whatsoever for him to be in a psychiatric facility. Number two that was interesting, immediately upon receipt of my notice that hearings were going to be conducted on the case the child was removed from the psychiatric hospital and placed, magically, into an appropriate setting.

These are just some of the reasons why I along with a group of dedicated child advocates brought CASA into Kentucky 4 years ago. I am convinced that CASA is one of the best things that ever happened to children in our State.

CASA volunteers are court-appointed special advocates for children. Trained community volunteers appointed by a judge to speak up for neglected and abused children in court. I am proud to be serving as president of the national CASA association.

Since its creation in 1977 this innovative program has had a dramatic impact on the Nation's court systems. There are now 366 programs in 47 States. We present have over 13,000 volunteers working with roughly 57,000 children annually.

Mr. Chairman, our volunteers are critical to helping the courts sustain America's family and they help to assure hundreds of thousands of abused and neglected children permanent nurturing homes.

CASA volunteers are ordinary citizens, businessmen, teachers, homemakers, factory workers. They are carefully screened and fully trained. The need for CASA volunteers is obvious. The number of reported child abuse and neglect cases has exploded to more than 2 million per year. Some States have experienced a jump of over 200 percent in the last 7 years. Unfortunately, however, child welfare staff have only increased minimally, so that some caseloads are 60 children for each single social worker, and that is not an uncommon ratio.

One of the major benefits of the CASA program is that the volunteer usually works on a one-to-one basis with the child. One volunteer for each child, not a ratio of 60 to one.

Even the most conscientious social worker and the vast majority of those whom I have worked with are performing truly heroically under very trying circumstances, but even the most conscientious social worker cannot possibly do everything that needs to be done for a child when they are responsible for 59 other children. The success of CASA is truly impressive.

In many cases, CASA reduces the amount of time a child spends in foster care, saving literally millions of tax dollars that would otherwise go to foster care support payments. Federal studies have demonstrated that when a CASA volunteer is on a child's case, the child is more likely to receive services than a child who does not have a volunteer.In other words, CASA volunteers give children a chance, a chance to grow up to be well adjusted, responsible adults.

Although most CASA programs do focus on neglect and abuse cases, a small but growing number of programs also serve children in custody cases, where there are accusations of neglect or abuse. At present, there are 12 such programs in five States working in custody cases.

When we talk about judicial reform, I cannot think of any better way to improve conditions for children in our courts than for judges to begin CASA programs in their jurisdictions. We as judges have a responsibility to do everything possible to reduce the intimidation that is unfortunately an inherent part of court proceedings. The ability to assign a volunteer advocate for a child helps a great deal.

Even something as simple as coming down from the bench, removing my robe and sitting next to the child eases the anxiety somewhat. Allowing the child to sit next to or on the lap of someone significantly close to him or her helps even more. Anything we can do along these lines, not only benefits the child but certainly furthers the administration of justice.

Thank you very much for your invitation to be here today.

[The prepared statement of Judge McDonald follows:]

NATIONAL COURT APPOINTED SPECIAL ADVOCATE ASSOCIATION
DETAILED TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
TUESDAY, MAY 16, 1989
INNOVATIVE RESPONSES TO CHILD ABUSE IN JUDICIAL PROCEEDINGS

Presented by the Honorable Tom McDonald, Judge
Thirteenth Judicial District, Louisville, Kentucky
President, National CASA Association

National Court Appointed Special
Advocate Association
2722 Eastlake Ave. E., Suite 220
Seattle, WA 98102
(206) 328-8588

NATIONAL COURT APPOINTED SPECIAL ADVOCATE ASSOCIATION
TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
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Presented by the Honorable Tom McDonald, Judge
Thirteenth Judicial District, Louisville, Kentucky
President, National CASA Association

SUMMARY

Thank you for the opportunity to testify on CASA programs. I believe these programs represent one of the most innovative responses to child abuse in judicial proceedings.

Over 366 CASA programs operate in 48 states. Members of the Judiciary Committee might be interested to know about the CASA programs from their states.

CASA Programs in States Represented
on the Senate Judiciary Committee

Alabama:

Family Court of Jefferson County
Birmingham, AL

Court Appointed Juvenile Advocates
Huntsville, AL

OF VOLUNTEERS: 86

Arizona:

STATE: CASA Program/Arizona Supreme Court
Phoenix, AZ

Coconino CASA Program
Flagstaff, AZ

Gila County CASA Program
Globe, AZ

La Paz County CASA Program
Parker, AZ

Maricopa County CASA Program
Phoenix, AZ

Navajo County CASA Program
Snowflake, AZ

West Navajo Agency CASA
Tuba City, AZ

Pima County CASA Program
Tucson, AZ

OF VOLUNTEERS: 200

Delaware:

STATE: CASA Program/Family
Court of Delaware
Wilmington, DE

CASA Program
Kent & New Castle Counties
Dover, DE

CASA Program/Sussex County
Georgetown, DE

CASA Program/New Castle County
Wilmington, DE

# OF VOLUNTEERS: 80

Illinois:

STATE: CASA - Illinois
Network
La Grange, IL

CASA of St. Clair County
Belleville, IL

CASA of Cook County
Chicago, IL

Lee County CASA
Dixon, IL

CASA of Kane County
Geneva, IL

Winnebago County CASA Program
Rockford, IL

CASA of Sangamon County
Springfield, IL

# OF VOLUNTEERS: 155

Iowa:

STATE: Iowa CASA Program
Des Moines, IA

Iowa CASA Program
Sioux City, IA

OF VOLUNTEERS: 87

Massachusetts:

CASA Program
Boston, MA

CASA Project, Inc.
Worcester, MA

# OF VOLUNTEERS: 155

New Hampshire:

CASA of New Hampshire
Manchester, NH

# OF VOLUNTEERS: 10
(new program in start-up
phase)

Ohio:

Guardian Ad Litem Program
Akron, OH

Friends of Children GAL
Program
Canton, OH

ProKids
Cincinnati, OH

Guardian Ad Litem Program
Cleveland, OH

CASA Project
Dayton, OH

CASA Program of Delaware
County Juvenile Court
Delaware, OH

Parachute: Special Advocates
for Children of Butler County
Hamilton, OH ProKids
Lebanon, OH

Volunteer CASA/GAL of Lucas
County
Toledo, OH

Mahoning County CASA Program
Youngstown, OH

# OF VOLUNTEERS: 395

Pennsylvania:

Erie County CASA
Erie, PA

Mercer County Court Appointed
Special Monitor Program
Hermitage, PA

York County CASA Program
York, PA

OF VOLUNTEERS: 94

South Carolina:

STATE: Trio Programs/GAL
Program
Columbia, SC

Aiken County GAL Program
Aiken, SC

Anderson County GAL Program
Anderson, SC

Bamberg County GAL Program
Bamberg, SC

Barnwell County GAL Program
Barnwell, SC

GAL Program
Beaufort, SC

Dillon/Marlboro County GAL
Program
Bennettsville, SC

Kershaw County GAL Program
Camden, SC

GAL Program
Charleston, SC

Chesterfield County GAL
Program
Cherau, SC

GAL Program
Chester, SC

Pickens County GAL Program
Clemson, SC

Volunteer GAL Program
Columbia, SC

Horry County GAL Program
Conway, SC

Florence County GAL Program
Florence, SC

GAL Program
Greenville, SC

Greenwood/Abbeville County GA
Program
Greenwood, SC

Darlington County GAL Program
Hartsville, SC

GAL Program
Lancaster, SC

Laurens/Newberry County GAL
Program
Laurens, SC

Lexington/Soluta County GAL
Program
Lexington, SC

GAL Program
Manning, SC

Marion County GAL Program
Marion, SC

Berkeley County GAL Program
Moncks Corner, SC

Guardian Ad Litem Program
Orangeberg, SC

Georgetown GAL Program
Pawleys Island, SC
York County GAL Program
Rock Hill, SC

Calhoun County GAL Program
St. Matthews, SC

Spartanburg County GAL Progra
Spartanburg, SC

Dorchester County GAL Program
Summerville, SC

Sumter/Lee County GAL Program
Sumter, SC

Oconee County GAL Program
Walhalla, SC

Colleton/Jasper County GAL Program
Walterboro, SC

University of South Carolina GAL Program
Fairfield County Project
Winnsboro, SC

Allendale & Hampton County GAL Program

Cherokee County GAL Program

Union County GAL Program

Edgefield & McCormick County GAL Program

OF VOLUNTEERS: 1,500

Utah:

STATE: State Guardian Ad Litem Program
Salt Lake City, UT

Weber County CASA Program
Ogden, UT

Guardian Ad Litem Program
Salt Lake City, UT

Uintah County CASA
Vernal, UT

OF VOLUNTEERS: 115

Vermont:

Guardian Ad Litem Program
Burlington, VT

Guardian Ad Litem Project
Saint Johnsbury, VT

OF VOLUNTEERS: 10

The National CASA Association is a nonprofit organization established to promote the growth and development of programs which utilize trained volunteers to advocate for abused and neglected children in juvenile dependency proceedings. A small but growing number of programs also serve children in custody cases where there have been allegations of abuse or neglect. At present there are 12 such programs in 5 states working in custody cases. (Please see the Appendix for a list of these programs).

Our volunteer advocacy work is founded on the premise that early intervention coupled with the appropriate and timely handling of a child's abuse or neglect case can prevent child victims from becoming juvenile and adult perpetrators. Our nation's juvenile detention facilities, training schools and adult jails, lockups and prisons house many young men and women who were themselves victims of abuse and neglect. Had they received the kind of service and support they needed as victims, they might well be taxpaying citizens today.

With support from the Office of Juvenile Justice and Delinquency Prevention, The National CASA Association has provided training and technical assistance to the growing network of programs that utilize roughly 13,000 volunteers to advocate for 57,000 children. Our work has helped thousands of children find permanence and stability in their lives at substantial savings to the public. Court Appointed Special Advocates or guardian ad litem volunteers help assure that judges receive sufficient information on which to base their decisions by conducting interviews of all parties involved -- the child, his parents and relatives as well as teachers, counselors, ministers; act as a spokesperson for a child's best interests; and monitor a child's case to help ensure that services are provided in a timely fashion and that deadlines are followed.

The number of CASA programs around the country has grown exponentially since the founding of the first program in 1977. The growth of programs has been particularly dramatic since juvenile justice dollars were targeted to program support and development as early as 1984. The number of programs has more than quadrupled over that timeframe (from 88 in 1984 to 366 in 1989) and the number of states having programs has increased from 29 to 47. Yet as dramatic as our growth has been, we cover only about 10.5% of the 3,000 potential jurisdictions and serve approximately 14% of the estimated number of children in care.

DESCRIPTION OF THE PROBLEM

In 1986, there were 2.2 million reports of child abuse and neglect in the United States. The crime of abuse not only steals the safety and innocence of childhood: it robs society as well. When children grow up in an environment of uncertainty and insecurity, they become vulnerable to many of our most serious social concerns -- drug abuse, teen pregnancy, mental illness, homelessness and crime. The American Humane Association estimates that each year approximately 300,000 cases involving children under eighteen come to the attention of juvenile courts due to allegations of abuse, neglect and abandonment. A tragic irony is that many become abusive parents themselves, thus perpetuating a vicious cycle.

Roughly 16% of abuse and neglect reports end up in the court. The courts must then decide what's best for the child -- is it safe for the child to go home, should he be placed in foster care, are special services needed? These are awesome decisions that can impact a child for the rest of his life. For some 270,000 children in this country, the decision has resulted in their placement away from home in foster care or an institutional setting. Numerous studies show that returning abused and neglected children to stable, permanent families can assist in preventing delinquency. Unfortunately, the abused and neglected children who end up in juvenile courts often become part of the costly "foster care drift".[1]

In theory, foster care is designed to be a temporary arrangement, the family separated only for the period necessary to better the situation for the child. But in reality, many of the approximately 270,000 children in the foster care system spend their childhood drifting from foster home to foster home due to a

System which fails to either reunite them with their families or expedite permanent placement. Some children literally grow up in the child welfare system.

There is a substantial relationship between child abuse and neglect and juvenile delinquency. Recent studies have shown that 33% of juvenile delinquents suffered from severe abuse, and that 66% of child abuse histories involved a "parent perpetrator."[2] A major cause of crime in the United States is juvenile delinquency. In 1987, youth aged 13 to 18 years old committed nearly 33% of all property offenses according to the FBI Crime Index. At the same time they were responsible for 15% of all violent crimes. Their percent in the population for this period was only 8.6% according to the U.S. Census Bureau.

In 1986, for every 100,000 17 year olds in the population, 4,605 were arrested. The rates were only slightly less for 16 and 18 year olds. Arrests for these ages are higher than for any other age group. The costs of both adjudication and incarceration are also high. (Costs range from $8,000 to $30,000 annually to keep a delinquent in a juvenile facility.)[3]

Statistics on the relationship between sexual abuse and prostitution are also revealing. Studies show that juvenile prostitutes had experienced more sexual advances by adults and were more often victims of incest and rape than other juveniles.[4] Between 40% and 50% of the reported sexual offenses against children are committed by juveniles.[5] Experts see a relationship between sexual molestation, lack of parental support, and a career of prostitution. "Abusive sexual experiences may have a significant impact on the victims' developing self-identity and this may relate to the development of adult patterns of female sexual or occupational deviance such as prostitution."[6] Even if a sexually abused child avoids the downward spiral of juvenile prostitution, studies show that sexually victimized children in general have poorer concentration and are more aggressive, withdrawn, antisocial, depressed, fearful, nervous and emotional.[7]

The best interests of the child too often get sidetracked in the current child welfare system. Due to enormous caseloads and financial restraints on social workers and juvenile court personnel, the process fails to expedite children toward any stable resolution, whether it be returning home to the natural parents or being freed for adoption. One study of 4,000 children in the foster care system predicted that more than half of them would be "living a major part of their childhood in foster families and institutions."[8]

An examination of the roles of the parties involved in juvenile court proceedings reveals the cause for a lack of adequate representation of the child's best interests. The goal of the attorney for the State or state agency is to prove the allegations in the petition. The attorney for the parents has an ethical obligation to represent them zealously. The social worker, with huge caseloads and administrative bureaucracy to deal with, is required to provide services to the entire family within the confines of agency policy. The judge must render a decision based on the evidence presented and is not in a position to advocate for the child. The child's best interests are not represented.

DEVELOPMENT OF CASA PROGRAMS

In 1974, the United States Congress enacted Public Law 93-247, the Child Abuse Prevention and Treatment Act, which provided financial assistance to states for the prevention, identification and treatment of child abuse and neglect. The legislation included a requirement for that assistance: mandatory appointment of a Guardian ad Litem to represent the abused or neglected child's best interest in every case which results in a judicial proceeding. Mainly due to the Child Abuse Prevention and Treatment Act, 36 states and the District of Columbia require the appointment of a Guardian Ad Litem to represent the best interests of children in abuse/neglect proceedings.

Traditionally, the Guardians Ad Litem appointed to represent children in juvenile court have been attorneys. Often, attorneys are the Guardian Ad Litem as well as the child's legal representative. This causes a conflict of two very separate roles. Attorneys are required to represent their client's views in court, whether in their best interests or not, while Guardians Ad Litems must represent the child's best interests, whether it is what the child wants or not. Besides the expense of attorneys' time, most attorneys have no special training in child advocacy, and they especially do not have the time to do thorough investigations and periodic monitoring of court orders.

"If the lawyer for the child is to decide what is in the child's best interests, nothing in the lawyer's training has equipped him or her to assess parental conduct, to appraise the harm to a child presented by his environment, to recognize strengths in the parent-child relationship, or to evaluate the soundness of an intervention strategy proposed by the social agency."

In 1977 a superior court judge in King County, Washington (Seattle) conceived of a unique program to address these concerns which utilized trained volunteers to serve as Guardian Ad Litem for abused and neglected children whose cases came before his court. The role of the court appointed volunteer was to insure that the child's best interests were represented in court, to gather vital information for the judge and to monitor the case so that the child did not get lost in the system. The volunteers interviewed the child, parents, relatives, teachers, physicians, ministers and gave the kind of attention to a child's case that was often prohibited by large caseloads carried by caseworkers and attorneys. In addition they offered a unique, unbiased perspective to the judge which was unfettered by bureaucratic loyalties or professional biases. And, many times they brought continuity -- they were the consistent face in the courtroom over the life of the child's case in court.

In the Seattle program's first year, it assigned 110 trained volunteers to 498 children. The next year, the National Center of State Courts selected the Seattle program as the "best national example of citizen participation in the juvenile justice system". Support for the program concept grew and programs began to develop around the country.

The American Bar Association advocates the use of qualified and trained non-attorney guardians ad litem, recruited from concerned individuals and organizations in the community on a paid or volunteer basis. The ABA's Juvenile Justice Standards Project found in 1976 that "While independent representation for a child may be important in protective and custodial proceedings, a representative trained wholly in the law may not be the appropriate choice for this function."[10]

The Department of Health and Human Services funded a study entitled the National Evaluation of the Impact of Guardians Ad Litem in Child Abuse and Neglect Proceedings which was published in 1988 by CSR, Inc. CSR, Inc. studied five types of GAL modes, 1) Law School Clinic Model, 2) Staff Attorney Model, 3) Paid Private Attorney Model, 4) CASA/Staff Attorney Model, and 5) CASA Model (with attorney and staff support). Two examples of each model were studied in nine counties from six different states. Data was gathered from three sources: 1) interviews with judges, states attorney and caseworker; 2) records of the court and the child welfare agency; and 3) two in depth case studies from each site -- called "network interviews". The study found that "compared to attorneys, the CASA models were clearly superior. CASA volunteers are excellent investigators and mediators, remain involved in the case and fought for what they thought was best for the program."[11]

The study noted also "The CASAs persistent monitoring of the case allowed them to identify needed changes and services in the case over time and caused the court and agency to approach the case more dynamically. This is reflected by the frequent court ordered changes in case plans found for the CASA models. Due to these factors - thorough case investigation, independence of viewpoint, monitoring of the case, positive relationships with the child and assistance in securing needed services - we give the CASA models our highest recommendation."

In Deprived Children: A Judicial Response, the National Council of Juvenile and Family Court Judges' Metropolitan Court Judges Committee made 73 recommendations to ameliorate the problems of deprived children who require public custody and protection. The fifteenth recommendation states that CASAs should be utilized by the court at the earliest stage of the court process, where necessary, to communicate the best interests of an abused or neglected child.

EFFECTIVENESS OF THE PROGRAM

The advocacy CASAs provide to children and the courts translates into: 1) public savings; 2) literally millions of valuable hours of volunteer service; 3) quality representation for children; and, most importantly, 4) better services for children.

1. Public Savings

An independent research firm studying a Florida statewide pilot Program over three years concluded "that a volunteer model is likely to be the most feasible, least expensive, and most effective means of providing guardian ad litem services to Florida's abused and neglected children."[12] The impact of recommendations made by volunteer guardian ad litem resulting largely from their thorough investigation of placement options, meant less intrusive service for children and dollar savings for the state. For example, "in 45% of 623 cases researched, volunteers recommended placements in less expensive, alternative care settings while awaiting court disposition. This resulted in a decrease in state-supported foster care costs between $200,000 and $300,000 in 1980."[13]

In Harris County (Houston, Texas) children in foster care who have CASA volunteers stay in foster care an average of 7 months less than those without volunteers. This produces an annual savings of $2,394 per child based on an annual rate of $4,100. In 1988, this meant the Houston program saved $287,280 in foster care costs alone.

In Florida, Rhode Island and King County, Washington, programs have been able to demonstrate that volunteers can provide effective advocacy for children at substantial savings. The King County program estimated a savings to the county of over $2,289,000 in 1988 based on what volunteers cost vs. paid attorneys. Rhode Island has demonstrated comparable savings.

2. Volunteer Service

In a management study conducted by the National CASA Association with funding from the Department of Health and Human Services, it was found that volunteers spend an average of 57 hours per case. Some crude figuring based on our estimate of 57,000 children served yields over 3,249,000 volunteers hours of service to children. If these volunteers had been paid a minimum wage ($3.35), that translates into $10,884,150; if paid at a $100 per hour rate (a common price for legal service) that's $324,900,000 worth of advocacy for children.

3. Quality Representation

An increase in the quality of representation for children through the use of trained advocates was demonstrated in a study performed by Donald N. Duquette and Sarah H. Ramsey in the Genesee County (Michigan) Juvenile Court in 1981 and 1982. Their study compared the effectiveness of representation between a control group of attorneys with no special training and a demonstration group of attorneys, law students and volunteers who received special training. The demonstration group outscored the control group in all categories. For example, it was found that for the demonstration group:

- The court process moved faster (mean of 34.9 days vs. 60.6 days for the control group);
- the cases were resolved with fewer hearings (2.6 vs. 3.1);
- more cases were diverted from the court process by being resolved in the preliminary hearings (27.3% vs. 14.3%);
- the cases had fewer dispositional hearings (35% vs. 60%) and produced fewer wards of the court (39% vs. 62%).

The authors attribute this outcome to "more careful assessment, screening and diversion of cases by the demonstration groups and perhaps to more watchful advocacy on behalf of a child once made a ward of the Court." Duquette and Ramsey conclude from this data that the demonstration model was clearly successful in improving the quality of representation of the child's best interests and, consequently, in creating better legal outcomes.[18]

4. Better Service to Children

The true bottom line is the impact of CASA volunteer efforts on the children served. Several case examples lend meaning and poignancy to the numbers and statistics quoted.

- One of the first cases a Seattle CASA was assigned involved a youth who had been a dependent of the state for nine years. The young man had come to be regarded as "retarded", was heavily medicated, and would probably have ended up as a throwaway child if it were not for his CASA. Through diligent efforts, the CASA was able to get the right systems working for this youth, and the young man is today regarded as a "miracle". He is at a top level in an adult group home, moving towards joining Job Corps, and eventually living semi-independently.

- An 18-month-old girl came to the hospital with a serious infection in her eye. The doctors examined her and found a tumor that needed to be removed immediately.

  Her parents, originally from El Salvador, did not speak English. The doctors brought in an interpreter to explain the procedure. The parents became very upset and refused to allow the surgery. The hospital contacted Child Protective Services, who determined that

> this was a case of medical neglect. The court ordered the eye to be removed, and the doctors performed the surgery.
>
> When the girl was ready to leave the hospital, the caseworker determined she shouldn't return home to her parents. She felt there was still danger of medical neglect.
>
> Meanwhile, a CASA volunteer had been assigned to the case. She visited the parents and was able to communicate with them in Spanish. She discovered that the parents did not understand the seriousness of their daughter's disease and refused the operation only because they wanted a second opinion.
>
> The CASA volunteer recommended in court that the little girl be returned to her parents, who were very loving people who would take care of their daughter.
>
> The little girl went home with her mother and father. Her condition improved, and her parents showed great care and concern in her medical needs.
>
> If a CASA volunteer had not been on this case, the little girl probably would have been sent to live in foster care.

There are even more dramatic examples, far too detailed for this discussion. Such examples are documented daily by CASA programs -- cases resulting in family reunification, successful adoptions, implementation of specially needed services, and finding safe, stable living environments.

THE NATIONAL CASA ASSOCIATION'S ROLE

Dedicated to the growth, promotion and development of CASA programs nationwide, the National Association has:

- Provided start-up grants for new programs (in 1988 the Association received a $150,000 grant from the Edna McConnell Clark Foundation and $20,000 from the Hasbro Children's Foundation to be passed entirely to developing programs);

- Trained program managers in such areas as negotiation, volunteer evaluation and supervision, permanency planning, etc. (in 1988, 160 program directors received training through the four Regional Management Training Seminars);

- Sponsored its Eighth National Conference attracting program directors, volunteers, judges and other child advocates from around the country. Over five hundred people attended.

- Published a quarterly newsletter, The Connection which keeps the network informed regarding new innovations, laws affecting programs and issues of concern to volunteers -- and published Feedback which provides timely information alerts to our local programs on topics such as funding opportunities;

- Established a clearinghouse including prize winning materials from CASA programs, sample legislation, and other resources needed by the network. Began expansion and computerization of a Resource Library for member programs.
- Provided assistance in starting new programs and technical assistance to 438 programs and individuals in 1988. Sponsored a meeting of 25 state directors to help support and develop state organizations.
- Promoted the CASA concept by providing speakers and faculty for national and statewide conferences, and by encouraging articles and programs in national media (Parade Magazine, Christian Science Monitor, Monitor Radio, USA Today) to spread the word about how CASA volunteers are helping abused and neglected children.
- Developed specialized publications -- Legal Liability Report and a new manual on program development.

The National Court Appointed Special Advocate Association was founded in 1982 to promote the growth of CASA programs and to provide a mechanism for the exchange of resources and information. Supported by the Edna McConnell Clark Foundation and the National Council of Juvenile and Family Court Judges, the Association hosted its first national conference in 1981. In 1984 the Association filed for incorporation as a nonprofit membership organization. Through the NCJFCJ assistance was received from the Child Development Foundation, IBM and the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP).

1985 was an eventful year, as the Association received the President's Volunteer Action Award, a Coordinated Discretionary Grant from the Department of Health and Human Services for a management survey, and negotiated a three year cooperative agreement with the Office of Juvenile Justice and Delinquency Prevention to provide technical assistance and training to the growing network of programs.

In addition to its ongoing support, the Edna McConnell Clark Foundation awarded funds in 1987 to allow the Association to provide start-up grants to 30 new CASA programs. Kiwanis International selected CASA as one of its major emphasis programs for 1987 and has continued its support by designating CASA as an ongoing Youth Services Program.

In 1988 the Association was awarded a one-year continuation of its cooperative agreement with the Office of Juvenile Justice and Delinquency Prevention. Also in 1988, Congress enacted Public Law (P.L.) 100-459 which contains report language stipulating that "Court Appointed Special Advocate programs be provided funds sufficient to continue and enhance their vital programs".

Since the first program was established in Seattle, in 1977, the number of CASA programs has grown exponentially, with most of that growth occurring since the National CASA Association opened a headquarters.

JUDICIAL REFORM

When we talk about judicial reform, there is no better way to improve conditions for children in our courts than for a judge to start a CASA program. Judges should do everything possible to reduce the intimidation that is an inherent part of the court proceedings. They can best accomplish this through a CASA volunteer, as well as through simple changes such as coming down from the bench, removing their judicial robes and sitting by the child. They could also allow a child attendant during court proceedings.

FUTURE NEEDS

There are still over 2,600 jurisdictions in the country with no CASA program and approximately 230,000 children in need of a volunteer.

The goal of the Association is to provide a CASA volunteer for each abused, neglected and abandoned child in this country who needs one by the year 2000. This goal is attainable, but only if the Association has the capability and the resources necessary to support the continued growth in programs and volunteers.

We ask that Congress lend its support to this innovative program for the nation's children.

FOOTNOTES

1. Mnookin, Robert H. *Child, Family and State*, 519, Boston: Little, Brown and Company, 1978.

2. Sandberg, D. *The Role of Child Abuse in Delinquency and Juvenile Court Decision Making*, Boston: Boston University School of Law, 1984.

3. Mnookin, R. H., *op cit.*, p. 756-776.

4. James, Jennifer. "A Formal Analysis of Prostitution" Part I: Basic Statistical Analysis. Final Report to the Division of Research, Department of Social and Health Services, Sate of Washington, 1971.

5. Becker, Judith V., Director, Sexual Behavior Clinic. "Evaluating and Treating Adolescent Sexual Offenders", New York, NY: 1986 (unpublished paper)

6. James, Jennifer; Boyer, Debra; Withers, Jean and Haft, Marilyn. *Perspective on Prostitution*. Seattle: Judicial Advocates, 1978.

7. Conte, Jon R., Assistant Professor, University of Chicago. "The Impact of Sexual Abuse on Children: Results of an Empirical Investigation", 1986 (unpublished paper).

8. Mnookin, R.H., *op cit.*, p. 579.

9. Duquette, D. "Liberty and Layers in Child Protection", *The Battered Child*, 320, C. Kempe & R. Helfer, eds., 3rd ed., 1980.

10. American Bar Association Institute of Judicial Administration, Juvenile Justice Standards Project, 822, 1976.

11. Cordelli, Larry, Ph.D., *National Evaluation of the Impact of Guardian ad Litem in Child Abuse and Neglect Judicial Proceedings*, Washington, D.C. CSR Incorporated.

12. MGT of America, Inc. *An Evaluation of the Florida Guardian Ad Litem Program*, Tallahassee: Office of the State Courts Administrator, 1983.

13. *Ibid.*

14. Duquette, D., J.D. "Improving Representation of Children in Abuse and Neglect Cases Through the Use of Non-Lawyer Advocates", (unpublished paper presented to the Fourth Annual National CASA Conference), Seattle, WA: 1985.

CASA Programs in Custody Cases
(04/06/89)

CASA Program, Family Court
W-350 King County Courthouse
Seattle, WA 98104
(206) 296-9320
Pat Dixon, Program Director

Okmulgee County / Creek
National CASA Project
403 W. Trudgeon
Henryetta, OK 74437
(918) 756-8700 ext. 294
Stephanie House, Director

NCJW, Inc.
Johnson County CASA Project
P.O. Box 31
Olathe, KS 66061
(913) 782-7252
Leigh Klein, Executive Director

Guardian Ad Litem Program
18th Judicial Circuit/
Seminole County
Seminole County Courthouse
301 N. Park Ave.
Sanford, FL 32771
(305) 323-4330 ext 115, 114, 113
Gretchen Gross, Circuit Dir.

Guardian Ad Litem Program
4th Judicial Circuit
1283 E. 8th St.
Jacksonville, FL 32206
(904) 630-0991
Arlene Friedman, Circuit Dir.

Guardian Ad Litem Program
17th Judicial Circuit
Borward County Courthouse Rm 550
201 S.E. 6th St.
Ft. Lauderdale, FL 33301
(305) 257-6214
Sherry Anderson, Circuit Dir.

Domestic Relations CASA Program
8th Judicial District Court
200 S. 3rd St.
Clark County Courthouse
Las Vegas, NV 89155
(702) 455-4306
Linda Ley, Coordinator

Comanche County CASA
908 Beacontree Pl.
Lawton, OK 73505
(405) 536-4022
Virginia Breeden, Director

Guardian Ad Litem Program
15th Judicial Circuit
Palm Beach County Courthouse
307 N. Dixie Highway, Rm. 122
West Palm Beach, FL 33401
(407) 820-2773
Ilene Gerber, Circuit Dir.

Guardian Ad Litem Program
18th Judicial Circuit/
Brevard County
Brevard County Courthouse
400 S. St.
Titusville, FL 32780
(305) 269-8186
Yvonne Dixon, Circuit Dir.

Guardian Ad Litem Program
10th Judicial Circuit
P.O. Box 9000, Drawer J125
Bartow, FL 33830-9000
(813) 534-4605
Sharon Kruse, Circuit Dir.

Guardian Ad Litem Program
8th Judicial Circuit
Alachua County Courthouse
201 E. University Ave., Rm 303
Gainesville, FL 32601
(904) 374-3656
Carole Zegel, Circuit Dir.

A child's voice in court.

The National Court Appointed Special Advocate Association
2722 Eastlake Ave. E., Suite 220 • Seattle, Washington 98102 • 206-328-8588

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Disciplinary Counsel
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Executive Director
Beth Waid

June 9, 1989

Senator Joseph R. Biden, Jr.
Chairman
Senate Committee on the Judiciary
United States Senate
Russell Building, Suite 221
Washington, DC 20510

Dear Senator Biden:

I certainly appreciated the opportunity to testify about CASA before the Judiciary Committee's hearing on child abuse May 16, 1989. I'm pleased as well to respond to the questions posed in your letter and understand that my response will be included in the hearing record.

Your questions and our responses to them are as follows:

1. How do CASA programs recruit and train qualified citizens?

CASA programs use a variety of means to recruit volunteers. They use television and radio public service announcements which are produced by the National CASA Association; public speaking to churches, service clubs and other interested groups; newspaper articles and word-of-mouth.

Training is a critical part of any CASA program. Initial training usually averages 20 to 25 hours for new volunteers and most programs also offer opportunities for on-going training in a variety of child development and legal areas.

In January 1990, the National CASA Association will be offering a training institute to present a comprehensive CASA training package to representatives from each of the 50 states. The training is nationally applicable yet designed so that jurisdictionally specific materials can be inserted. The training is based on extensive research which identified the elements necessary for excellent CASA volunteer performance.

CASA programs recognize that before CASA volunteers can become successful advocates for children, they must be trained. Although volunteers bring enthusiasm and commitment to the program, they may not have the technical knowledge necessary to work effectively in the child welfare/juvenile justice areas. It is up to the program director and CASA staff to provide it.

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CASA volunteer training traditionally comes in two forms: pre-service training, and regularly scheduled in-service workshops.

Most CASA programs begin training by giving each participant a copy of the CASA Training Manual. To date, CASA programs have each developed their own manual, specific to the laws and needs of their individual communities.

CASA Program Training Manuals often include a copy of the state statute dealing with child abuse and neglect, and the role of the guardian ad litem, the CASA job description, program policies and procedures, a section on confidentiality, copies of court report forms, flowchart depicting how cases move through the court system, a description of how abuse cases are reported, investigated and referred to CPS, handouts from training sessions, names of program staff and how to contact them.

Other topics usually covered include: juvenile court system, foster care system, the problem of child abuse and neglect, community resources, assessing the risk to the child, and interviewing techniques.

Copies of award-winning training manuals from local CASA programs are available through the National CASA Association.

Most CASA programs also offer on-going training to volunteers which averages approximately 13 hours per year.

The National conference and Regional Training Seminars are also important training opportunities for 650-750 volunteers and program staff each year.

2. I understand that in the course of representing a child, the court appointed advocate comes into contact with attorneys, social workers, and law enforcement personnel. Can you convince them that a trained volunteer program is needed in a jurisdiction that has no such program?

While some social workers and attorneys may have initial resistance to CASA, they become very supportive of CASA programs. In fact, the other parties to the proceedings often request that volunteers be assigned to cases once the program is in operation. Professionals realize the importance of volunteers who provide continuity on cases with high social worker and attorney turnover. Law enforcement personnel recognize that CASA volunteers are operating as officers of the court and have seen their value as a source of objective information to the judge.

Attorneys also come to see the advantages of CASA volunteers. The National CASA Association receives strong support from the American Bar Association as well as the National Legal Resource Center for Child Advocacy and Protection. Stan Chauvin of the American Bar Association describes CASA as a "national success".

Studies show that the special training a CASA volunteer receives often makes that layperson a more effective advocate for the child than an attorney who has received no special training in child welfare.

In courts that use CASA and attorney "teams", the CASA volunteer brings special skills that can significantly improve representation. Because they have been trained in the dynamics of child abuse and neglect, CASA volunteers provide the attorney with vital information about the social factors effecting the child and the family. Volunteers are also familiar with community resources available to help.

3. I am familiar with the ambitious goal that your Board of Directors set in 1988: that by the year 2000 every child who needs one will have a volunteer court appointed advocate. How are you planning to meet that laudable goal?

This goal is attainable, but only if the Association has the capability and the resources necessary to support the continued growth in programs and volunteers. The number of CASA programs has grown from 88 to 366 in the last five years. In order to sustain or increase this growth rate while maintaining existing services to an ever expanding group of on-going CASA programs, the National CASA Association must increase its resources in the areas of program development, technical assistance, public education and resource development for programs.

Our strategic plan includes:
- Targeting start up projects for urban areas without CASA programs, as will efforts to expand successful CASA programs to serve a greater number of children in their existing jurisdiction.

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- Continued outreach to professional organizations, judges, attorneys, social workers.
- National publicity to increase visibility, enable programs to recruit more volunteers.
- Increased support to the 27 statewide CASA programs.
- Establishing CASA programs in the 2 remaining states that have no programs.

The Board feels a sense of urgency to meet this goal because of the magnitude of the problem of child abuse and neglect and its ramifications for the next generation.

We believe that with increased funding support, the National CASA Association will be able to meet this goal by the year 2000. Every abused and neglected child deserves a voice in court.

Thank you for this opportunity to respond to your questions.

Sincerely,

Tom McDonald

Judge Tom McDonald
President, NCASAA

TM/LB

STATEMENT OF MS. JAYNE CRISP

Ms. CRISP. Chairman Biden, thank you for the invitation to appear before you today.

My name is Jayne Crisp, and I am the Director of the Victims Witness Assistance Program, of the Thirteenth judicial Circuit Solicitor's Office, in Greenville, SC. That circuit includes a small jurisdiction and a large one. I have worked in that capacity for 11 years and have been a victim advocate for the last 15 years and established the first Rape Crisis Council in the State of South Carolina in 1974.

Our Victim Witness Assistance Program is a prosecutor-based comprehensive program that offers outreach and assistance to victims of violent crimes from the time a crime occurs through the appeals and parole hearings. We are an unusual program, because our assistance is immediate, we do not wait for an arrest or a decision as to whether the case is prosecutable before offering assistance. We have six full-time staff members and provide assistance to over 2,000 victims, survivors and family members a year.

Our program was one of the first in the country and the first in South Carolina, established under a small LEAA grant, with the help of Senator Thurmond and under the direct leadership of William W. Wilkinson, Jr., who now is a judge on the Fourth Circuit Court of Appeals.

Joseph J. Watson is currently serving as our Thirteenth Circuit Solicitor. By the way, prosecutors in South Carolina are called Circuit Solicitors.

The leadership in the office during the past 11 years has encouraged creative growth in the program, which has enabled us to develop successful partnerships with both the private and the public sector. We do not depend solely on Federal funds or local funding, but we do get a lot of private assistance as well.

The CHAIRMAN. With Strom Thurmond, you are probably the only one who would be able to.

Ms. CRISP. Pardon me?

The CHAIRMAN. I say with Strom Thurmond, you are probably the only one that would be able to, if you wanted to.

Ms. CRISP. Well, we work very aggressively with the private sector, and he——

The CHAIRMAN. You work very aggressively with everybody. [Laughter.]

Ms. CRISP. We recognized over 3 or 4 years ago that children who were coming through our court system as victims and witnesses had very little skills and really did not know anything at all about safety education prevention. They did not realize that they could report abuse, they were not given permission to—it never occurred to them that they could even disclose abuse in a safe way. Most of our cases when the children were abused were determined from teachers and social workers that the child basically accidentally disclosed to them or through their friends.

In 1981, our office, with the assistance of professional volunteers, wrote a safety education curriculum guide for the third grades, called "House-Wise, Street-Wise," which is now a mandatory part of the curriculum in the majority of South Carolina schools, and is established in school districts in 45 other States as well. Recently, "House-Wise, Street-Wise" was the recipient of a President's Child Safety Partnership Award.

Our office recently also professionally produced a 12-minute videotape for child witnesses, called "Taking the Stand." It was made possible by a grant through the Mobil Foundation. It will be used in courtrooms by prosecutors, by law enforcement officers, social workers to help children understand the court process and to make the court process more user-friendly for children, and it will be available for national distribution on July 1.

The CHAIRMAN. Do you have a copy of that with you, by any chance?

Ms. CRISP. Yes, I do and you have one in your packet.

The CHAIRMAN. You are ahead of me.

Ms. CRISP. You also have a copy of the "House-Wise, Street-Wise" guide and a survival guide we publish for our survivors.

Three years ago, our office formally developed a project, with the assistance of JAA funding and VOCA funding, that provides assistance exclusively under the special project to child victims, witnesses an their families, from crime to court. All families are given a survival guide and are encouraged to participate actively in decisions regarding their cases and their children's cases. They are notified of arrests, bond hearings, pretrial conferences, preliminary hearings, et cetera, and we pay for all counseling that is necessary for the children, their families or extended family members. We help——

The CHAIRMAN. This is in addition to children, this is not exclusively for children?

Ms. CRISP. No, we include children in this activity, but we have a special children's project where we have two full-time child advocates that——

The CHAIRMAN. How important is it—this is a slight digression—to the victims of crime to be made aware of the proceedings against the defendant as they occur?

Ms. CRISP. I think it is absolutely critical, it is their most important need as far as the need for information. An NIJ study completed in 1984 determining victim's satisfaction with the criminal justice system, surveyed 8 sites nationally and victims of violence in those sites said that the most important thing they needed from the system was information regarding their case and the need to feel influential. Greenville, by the way, was the jurisdiction that had the most satisfied victims.

Our child abuse advocacy project was established because South Carolina's child abuse protection laws discriminate against children who are abused by noncustodial perpetrators. I have since discovered that the majority of child abuse protection laws nationally provide no court-appointed support or intervention for children abused or victimized by criminal offenders. The majority of States have wonderful child abuse protection laws, but they are discriminatory. They discriminate against children who are abused by people who are not acting in loco parentis.

Traditionally, advocates for children who are appointed represent neglected, abused or abandoned children——

The CHAIRMAN. They discriminate against children who are victimized——

Ms. CRISP. By people not acting in loco parentis, in other words, people who are a familiar molester, a school-yard shooter, a pedophile who is a nonfamily member, those kinds of children are discriminated in our courts and by our social service system because they do not fall under the protective authority of our State Department of Social Service.

We have a case in Greenville that occurred 3 years ago, where a woman killed her husband, went to jail, was released on bond, was returned home to her 2-year-old child whom she slashed and drowned. Simply because she had not injured her child, the child was not given a court-appointed advocate or assigned a guardian ad litem and the child became at risk and indeed was killed by the mother within 2 weeks of her murdering her husband.

We recently had a child—we have had six cases in the last year where children have eye-witnessed——

The CHAIRMAN. How would that be handled differently?

Ms. CRISP. How would that be handled? Now that we have a program, we target all children who may be at risk who were not calling on the protective service of DSS or——

The CHAIRMAN. The definition is someone at risk if they are in the household of a family member——

Ms. CRISP. A violent offender.

The CHAIRMAN [continuing]. A violent offender who is accused of but not convicted of?

Ms. CRISP. Oh, yes. Oh, yes, and she had made statements that she had killed her husband so, you know, there is obvious——

The CHAIRMAN. That is useful to know.

Ms. CRISP. Yes, that is——

The CHAIRMAN. I'm not being facetious when I ask it, I am very curious. In your jurisdiction, if a mother in the custody of a child is accused of a violent crime out on bail, but not convicted of a violent crime, pleads her innocence, is there a mechanism available in South Carolina to take the child away from the mother?

Ms. CRISP. No, not unless she threatens that child or abuses or neglects that child.

The CHAIRMAN. OK.

Ms. CRISP. So, she could have killed her entire family and the court can determine that she is free to go home and she has one child left.

The CHAIRMAN. I misunderstood what you were saying then. In the case of the mother, the woman killing her husband, being released on bail, then slashing and drowning her child, is there anything under the law in South Carolina that could have been done to "save that child"?

Ms. CRISP. No, not the way our social service system exists and not the way it exists in the majority of States across the country.

The CHAIRMAN. Is there anything legally that could be done in any way?

Ms. CRISP. We charged her with murder.

The CHAIRMAN. The mere fact that she was charged with murder——

Ms. CRISP. There was nothing that could have been done to prevent the killing of her child, no, sir.

The CHAIRMAN. OK. I misunderstood you.

Ms. CRISP. She was charged with murder after that incident as well.

The CHAIRMAN. I understand. OK. I misunderstood what you were saying earlier.

Ms. CRISP. You know, my point is that unless someone is abusing their own child, there is no protection for that child. There was no protection for this child, because the child was in the court's eyes, unfortunately, not presumed at risk. There was common sense left outside the chambers of that courtroom.

The CHAIRMAN. I understand.

Ms. CRISP. These children that I am talking about, children of school-yard shootings, children of pedophiles, nonfamily molesters, do not have the same intervention and protection that is offered to children who fall under the protective custody or authority of our Health and Human Service Department, child protective service, guardian ad litem programs. They are on their own to identify appropriate mental health counseling, financial aid, State victims compensation, court information. These children and families need to have a person specifically designated to act on behalf of children in the courts of common pleas as well as general sessions. They need somebody to help explain in language understood by the child all the legal proceedings in which the child will be involved, to act as a friend of the court to advise the judge, whenever appropriate, of the child's ability to understand and cooperate with the court's proceedings, and especially to assist the child and the child's family in coping with the emotional impact of the crime and subsequent criminal proceedings in which the child is involved.

Thirteen States have special advocates for children, and only six of these States, California, Indiana, Pennsylvania, Rhode Island, South Dakota and Wisconsin, have designated court-appointed special advocates for children who will work in the criminal courts with these types of children. The remaining 37 States have no organized response to child victims—I should not say no organized, but no mandatory response, it is clearly a voluntary effort on the part of the——

The CHAIRMAN. Is there any evidence in those States where it is mandatory that it is working?

Ms. CRISP. No, it is strictly a voluntary project right now, and this is what I am hoping that more people will be able to see this giant loophole in the laws. We had about 74 percent of our child victims cases in this last year where children who did not fall under the protection of DSS or the guardian program.

I am currently working—this may be of some assistance to you—I am currently working on an 18-month project with the Crime Victims Research and Treatment Center at the University of South Carolina, funded by State Justice Institute. We are studying jurisdictions in Florida, Alabama and South Carolina in order to develop a model national child victim witness protocol, and this should increase some sensitivity in the courts, improve coordination, et cetera, and, most importantly, reduce the level of trauma experienced by children. And perhaps some of the States that are represented by committee members would be interested in participating in the project after our first 18 months.

The CHAIRMAN. I can tell that you know Strom Thurmond. [Laughter.]

Ms. CRISP. I am honored to have been asked to participate in these hearings, chairman Biden, today as a representative of a rather small program that has recognized the need for special child advocates in the criminal justice system for children of criminal offenses.

Most of us here today on our panel have innovative programs and we have taken the opportunity to do things that have never really been done before, things that were not expected of us. These activities are practical and voluntary responses to a system that has not until recently recognized the very special needs of children and their families.

Regrettably, the programs that you see before you are only available to the children in our jurisdictions. Our children are fortunate. We are the exception. Thousands of other children who are victims of violence do not receive the support that is necessary for their welfare and which is also so beneficial to the courts.

I encourage you to support legislation that would be responsive to the needs of children and courts, especially in a simple way arguing for speedy trials for children. We ask for speedy trials for the offenders, and yet we wait sometimes years for children to have to come to court.

We should encourage creativity in program development by rewarding and recognizing projects that make a difference in courts and communities. It does not take a lot of money, it just takes good leadership and a desire to do something right, especially those programs that promote and establish prevention education for young children and children in the middle schools, and also, most importantly, to continue adequate Federal funding for programs that offer comprehensive assistance to all victims of violence, all victim populations, and children who eye-witness violence.

I appreciate again your invitation today and would be glad to answer any questions that you might have.

[The prepared statement of Ms. Crisp follows:]

TESTIMONY REGARDING CHILD VICTIMS AND THE CRIMINAL JUSTICE SYSTEM

Presented To

THE UNITED STATES SENATE JUDICIARY COMMITTEE

BY: JAYNE CRISP
MAY 16, 1989
WASHINGTON, D.C.

My name is Jayne Crisp and I am the Director of the Victim Witness Assistance Program of the Thirteenth Judicial Circuit Solicitor's Office in Greenville, South Carolina. I have been an advocate for victim's rights for fifteen years and established the first Rape Crisis Council in South Carolina in 1974.

The Victim Witness Assistance Program is a prosecutor-based, comprehensive program that offers outreach and assistance to victims of violent crimes from the time a crime occurs through post-adjudication hearings. We are an unusual prosecutor-based system from the prospective that our assistance is immediate. We do not wait for an arrest or a decision as to whether the case is prosecutable before offering assistance. Our program was one of the first in the country and the first in South Carolina, established in 1978 by William W. Wilkins, Jr., who is now a Judge in the Fourth Circuit Court of Appeals. Joseph J. Watson is currently serving as the Thirteenth Circuit Solicitor. The leadership in the office during the past eleven years has encouraged creative growth in the program which has enabled us to develop successful partnerships with both the private and public sector.

The Victim Witness Assistance Program is known for its pro-active response to child victims and in 1981, our office, with the assistance of professional volunteers, wrote a curriculum guide for third grade students called **"HOUSEWISE STREETWISE"**. HOUSEWISE STREETWISE is a safety education program that is now a mandatory part of the curriculum in the majority of South Carolina schools and is established in school districts in forty-five other states. I have included a guide in your packets. HOUSEWISE STREETWISE was a 1987 recipient of the President's Child Safety Partnership Award at the White House.

Three years ago, our office formally developed a project with the assistance of Justice Assistance and Victims of Crime Act funding, that provides assistance to child victims, witnesses and their families from the time a crime takes place to post-adjudication hearings such as parole hearings. All families are given a "survival guide" to the court system and are encouraged to participate actively in decisions regarding their cases. They are notified of arrests, bond hearings, pre-trial conferences, preliminary hearings and all other activities relative to their case. Our office pays for counseling that may be necessary for the child and family, especially if the child victim has been an eyewitness to a homicide or has been a victim of violence. We help with Victim Impact Statements, Victim Compensation and accompany all our families to all court hearings.

Our office recently professionally produced a twelve minute videotape for child witnesses that was made possible by a grant from the Mobil Foundation. The video will hopefully make the courtroom more "user friendly" for children who have to testify in court.

Our child victim advocacy project was established because South Carolina's Child Abuse Protection laws discriminates against children who are abused by non-custodial perpetrators. I have since discovered that the majority of child abuse protection laws nationally provide no court-appointed support or intervention for children abused or victimized by criminal offenders. Traditionally, advocates for children usually are appointed to represent neglected, abused, abandoned children in juvenile and family court proceedings. Other children who are victims of schoolyard shootings, sexual and physical assaults, and child eyewitnesses to violence, rarely if ever, have the support and protection of an advocate. They do not have the same intervention and protection that is offered to children who fall under the protective custody of the State Department of Social Services. They are on their own to identify appropriate mental health counseling, financial aid, state victim's compensation and court information. These children and families need to have a person specifically designated to act on behalf of children in Courts of Common Pleas and General Sessions:

1) To explain in language understood by the child, all legal proceedings in which the child will be involved;

2) To act, as a friend of the court, to advise the judge, whenever appropriate, of the child's ability to understand and cooperate with the court's proceedings;

3) To assist the child and the child's family in coping with the emotional impact of the crime and subsequent criminal proceedings in which the child is involved.

Thirteen states have special advocates for children and only six of these states, California, Indiana, Pennsylvania, Rhode Island, South Dakota and Wisconsin have designated Court Appointed Special Advocates for Children. The remaining thirty-seven states have no organized reponse to child victims of criminal offenses. These states need legislation that would expand the protection of child victims by providing for a person to act on behalf of the child victim in criminal courts and by permitting this advocate to assist the child and family.

I am currently working on a project with the Crime Victim's Research and Treatment Center of Medical University of South Carolina, funded by the State Justice Institute, that will develop and implement a set of criteria that will permit us to assess nine judicial circuits in Florida, Alabama and South Carolina, to develop a practical child victim protocol that will provide the judicial system with guidance on effectively handling such cases in the future. Adaptation of the protocol in the states should increase sensitivity and understanding among criminal justice, social service and mental health officials of the special needs of child witnesses. It should also result in improved coordination among key officials, improved services and a reduced level of trauma by children involved in the court process. Perhaps some of your states would be willing to participate in our pilot project.

Senate Bill #S.533, the Reid/DeWine Victim's Rights Bill, includes a Federal Child Victim's Bill of Rights that would offer protection to children in the federal court system. Hopefully, this bill, if passed can act as a model for state legislation that can be more responsive to child victims.

I am honored to have been asked to participate in these hearings today as a representative of a small program that has recognized the need for special child advocates in the criminal justice system. Most of us here today on our panel have taken the opportunity to do things that have never been done before. Things that were not expected of us. These activities are practical and voluntary responses to a system that has not, until recently, recognized the special needs of children and their families. Regretably, these programs and services are only available to those children who are fortunate enough to live in our jurisdictions. We are the exception. Thousands of other children who are victims of violence do not receive the support that is necessary for their welfare and which also is beneficial to the courts. I encourage you to:

1) Support legislation that would be responsive to the needs of children in the courts;

2) Encourage creativity in program development by rewarding and recognizing projects that make a difference in courts and communities, and

3) Continue adequate federal funding for programs that offer comprehensive assistance to all victim populations, including children who eyewitness violence.

Willard Gaylin wrote, "A system of justice must consider the victim even though he or she can no longer be helped in order to protect others who also may become victims and unhelpable. To be beyond help must not mean to be beyond thought and compassion. Otherwise, we lose focus of the very intentions of the laws. And justice demands more. A system of justice must speak to the righteousness. It must not just demand the good; it must proclaim the good. It must announce our moral purposes."

Respectfully submitted by:

Jayne Crisp, Director
Victim Witness Assistance Program
Suite 101, County Courthouse Annex
Greenville, South Carolina 29601
(803) 298-8612

The CHAIRMAN. Thank you very much.

At the very end, Ms. Crisp, you and another witness touched on something I find somewhat compelling. I am not sure if we can do it at the Federal level, but I would like to ask the rest of you to comment on the issue. That is the notion that having States insist on prioritizing, bringing to trial criminal offenses where the victim is the child. It seems to be eminently sensible and a compelling notion, but maybe I am missing something. Beginning with you, Judge, since you are one of the guys in the front line who makes judgments as well as an advocate on the outside of your responsibility as a judge. What do you think of that notion, Judge?

Judge McDONALD. You are not missing a thing, Senator. I wholeheartedly agree with you. Our Juvenile Code in Kentucky was revised substantially 2 years ago, and this is one thing I testified very strongly in favor of. We now require in child abuse proceedings in the civil aspect of those proceedings that the trial be held within 21 days of the time of arraignment.

The CHAIRMAN. Is that an exception compared to other States, if you know?

Judge McDONALD. I think this is a growing trend in that regard. Unfortunately, the legislature did not see fit to expand that to the criminal proceedings, and I really do think that——

The CHAIRMAN. Were you asking for a limitation on the number of days, or were you insisting in the legislation that the prosecutor prioritize, without specific days? In other words, the prosecutors office would be required to move to the front of the pack those cases that involve children as victims, as opposed to a specific legislative requirement that within 20 days, 10 days, 40 days, 60 days, that the trial be held?

Judge McDONALD. We were not advocating for prioritizing. We felt that we could get the 21-day rule passed.

The CHAIRMAN. I see.

Joe, what is your view on that?

Mr. DELL'OLIO. I have reflected on this item quite a bit. Having come in contact with victims in our shelters and observing them while the police were there questioning the youngsters, I would be very, very sensitive about who would question these youngsters in the court.

I think we should bear in mind that many of these young people grew up in an environment where the abuse became common place, this became the norm, and really they were not aware that there was something wrong until they came in contact with people outside of their families, and then they became very confused when somebody told them that what was happening to them was against the rules of society.

I have seen young people being questioned, handle it in different way. I remember one 5-year-old, when questioned by the police, just kept running around like a whirling dervish, he would not answer the police officer's questions. His brother and sister just clammed up, they were conditioned not to speak about the subject.

I think this is very difficult to get at what happened in that family, especially with the younger children, so I think it is very critical that people who do question these young people in court be carefully trained, understand that these young people also feel guilty about what happened. It is difficult for them to turn on their parents, once they realize that something wrong has happened to them.

So, it is an area that I would tread very lightly on.

The CHAIRMAN. Let me make sure I understand. How does that relate to requiring the prosecutor to make a judgment as to how to proceed in the case of an abused child prior to making the decision of how to proceed on the murder one case involving a 45-year-old storekeeper? I missed your point.

Mr. DELL'OLIO. My point very clearly is that whoever does proceed with questioning the child should be very sensitive to——

The CHAIRMAN. I agree with that, but let me rephrase the question. I am sorry, maybe it got lost in the translation. One of the suggestions made by both Ms. Crisp and one of the witnesses in the first panel is that prosecutors be required to prosecute cases where the child is the victim before they prosecute cases where the victim is someone other than a child. In other words, they get moved to the front of the docket. The rationale is that the longer the time that intervenes between the time of the abuse and the time the child goes to trial to testify, it works against the child in every way. So the proposal is to move up cases involving child abuse, and require the prosecutor to say, okay, I have got these 40 cases for this month that I am going to prosecute, they are on my desk, 3 are child abuse cases and 37 do not relate to child abuse, I am required by law to try or plead out or deal with the first 3 relating to children before I can touch the rest. That is my question, does that make sense?

Mr. DELL'OLIO. Yes, I would definitely be for that, of course.

Mr. CRAMER. Senator Biden, I would like to take that one step further. I do not think prosecutors should mix and mingle in a single caseload a murder case with a child abuse case or the drug case. I think prosecutors that handle child abuse prosecutions should be allowed to specialize.

I thought that my circuit was too small to afford me staff to be able to say this prosecutor will handle only child abuse prosecutions. Twelve child abuse cases will consume the time of a prosecutor. Twelve burglary cases will not consumer the time of a prosecutor. If you are juggling in one week's time a murder case and getting ready next week for a robbery-assault case and you have got a child who needs to be interviewed and prepared for court 3 weeks from now, you are probably not going to be able to do that correctly. So I think it is important—our biggest problem in our system right now are the continuances that occur within the system, and we are begging our judges, begging our judges to give child abuse cases first priority. I have a child back home right now who is about 6 years of age whose has been waiting for a year. Her case has been continued four times. We had a remarkable occurrence in the middle of that, a judge resigned in the middle, but that child is going to be a much more difficult witness a year after the disclosure than toward the front-end.

The CHAIRMAN. It seems to me that the quicker a resolution, the better it is for the child. I do not know how I can legislate this, nor if I could. I know what I would do if I were a governor, or would attempt to do.

Based on what I know before I came into these hearings and what I have heard in these hearings, it seems to me that it is not unreasonable for jurisdictions to have judges who specialize in these cases. If the statistics are even remotely correct about the number of child abuse cases that are coming to the fore, whether it be in the civil end of it, in the family court, in custody matters and related visitation concerns—and they are distinct—or whether it is in the criminal side.

Although I got elected here when I was 29, so I did not get a chance to practice law that much, all I did was practice criminal law and family law, with one or two exceptions. And what you just said, Mr. Cramer, is exactly what happens.

Just like you have social workers who have 60 cases, you have prosecutors who have 160 cases, 200 cases. A prosecutor goes to court in our jurisdiction, Joe, every Monday, with a sheet under his arm or her arm that will literally be 10, 12 cases, major cases, 2 murder, 1 robbery, etc. They hope that that morning they are going to be able to plead out 11 or 12, knowing they will probably only plead out 8 of the 12, knowing that they are going to ask for a continuance for the remaining 3. In the process they are never able to give the kind of time, attention, reasonable psychic reinforcement and affection to the child who is the victim. It is not possible, in fairness to the prosecutor, in my view. I do not know how they can do it. I do not know how it can get done.

So, I guess what I am asking you all—and I will shift from this in a moment—does it make sense to go even further than you have gone. Mr. Cramer, are there any model programs in the country that have, within the same jurisdiction, a judge who does nothing but child abuse cases, at least for a term? It would be a useful thing, it seems to me, just for one whole term, not to do it for the rest of his life, to develop an expertise in child abuse cases. Even people who are not bright develop expertise through repetition and exposure. I do not mean that judges are not bright, but the point is it is a useful tool.

Most people go into these things ignorant, as I did when I started this process. I still have a significant amount of ignorance relating to the total scope of the problem. Are there no model circumstances where you have prosecutors who do nothing but, exclusively trained for, prosecuting child abuse cases? Are there no judges who do nothing but listen to, try to resolve, and rule upon, child abuse cases, civil and criminal. Are there no jurisdictions with police officers who are trained, like we finally started to get in some cases on rape cases—not nearly what we should, but we tried and we are trying more—to be aware of the special nuances that relate to the initial investigative stages of child abuse? Are there jurisdictions with social workers specializing in child abuse? Is this organizational structure unrealistic? Even though it may be desirable, is it possible?

You all are out in the field every day, is it possible to put together that kind of circumstance, and is it desirable to do so?

Mr. CRAMER. From my point of view, I hope so. I do not know of any place where that is being done, but in every profession that responds to the subject matter, we are asking people to specialize and we are admitting that not everybody can or should be doing this kind of work. Why should judges be removed from that? Physicians are not. There are a lot of physicians that do not want to do these examining of children.

The CHAIRMAN. We even do it with judges, by the way. We have special bankruptcy judges, because we acknowledge that bankruptcy is so unique, so complicated and so involved and prolonged. We concluded that the bankruptcies clogged the courts so badly that we were going to have the equivalent of article III judges at the Federal level who did nothing but bankruptcies. Why can that not be done for children?

Judge McDONALD. Senator, it is being done. That is exactly the system we have in Louisville. The only problem I would have with it, if an individual were specifically assigned as a judge in juvenile court and did not want to be there, obviously that would be a problem. In our jurisdiction, I have been on the bench a little over 5 years, have spent four of those in juvenile court. If you have an interest and you want to stay in the court, you can.

The prosecutors in my court do nothing but prosecute dependency, neglect and abuse cases, the same with the social workers. We have what is called a crimes against children's unit which is a specialized unit of the police department. There is paired on a team basis with social workers. When they go out to investigate the serious cases, not only the cop goes into the house, but the social worker goes in as well, because, regardless of how seriously traumatized the child may have been, if they see their parents going out in handcuffs, we need to deal with that additional trauma, and so it is working fairly well.

The CHAIRMAN. With your permission, Judge, I would like to send some staff down to spend some time with you in Louisville.

Judge McDONALD. We would welcome that, Senator.

The CHAIRMAN. We can look at it and I am going to ask the staff to come down and spend a little bit of time with you, if you are willing.

Judge McDONALD. Fine.

The CHAIRMAN. Again, it is obvious that I am not an expert in this area. But I did spend 3 years of my life in this area in the broader context, not just child abuse cases, but within the family court system that in our State had jurisdiction over all of these issues at the time I was practicing. It is one of those circumstances where it is hard to blame anybody, because everybody is so overloaded.

One of the other questions I have is are there enough competent social workers being produced by this generation of Americans? Joe?

Mr. DELL'OLIO. My concern is that I do not think enough people are going into social work as, say, 15 or 20 years ago. I notice at the service delivery level, the division of child protective service delivery level, where you should have your most competent staff, is where we do not have our most competent staff. That is where we have people who are just coming into the field with bachelor's degrees.

I remember at one time, where most of the people had graduate degrees, they were receiving grants at one time from the National

Institutes of Mental Health for master's degrees in social work, but that program fell by the wayside years ago.

This is very disconcerting but, you know, there is one thing I want to say. We have been hearing about the increase in reported cases of child abuse. In Delaware, the number of reported cases of child abuse has gone down. From 1985 to the present, the number of reported cases has dropped 11 percent. The number of confirmed cases of child abuse has about stayed the same, in the 1,800 range.

The CHAIRMAN. Why?

Mr. DELL'OLIO. We did a study 1 year ago on unreported cases of child abuse and found that there were as many unreported cases of child abuse that people owned up to not having reported as there were reported that year, and I would say there probably are as many, if not more, being unreported.

The reasons right now are unclear. I am hoping that maybe we could say that all of these prevention programs are taking hold, but I am not that naive to say so. I know there is increased advertising, people now know where to report, the emergency numbers are put on buses, billboards, so there is more of an awareness, but just why——

The CHAIRMAN. I am going to be very parochial here, and I apologize to the rest of the panel, but it may not be different in your States. Your organization is so well respected in our State that it is viewed, rightly or wrongly, by many in our State as the only legitimate alternative, if you have problems along the lines that we are talking about.

The reason I say that is I think there has been so much consistently bad press over the last 5 to 7 years for family protective services in our State, that I suspect, as an outsider of the process, that maybe one of the reasons it is not reported is people believe there is no point in reporting it. I may be wrong. Tell me if I am wrong about that.

Mr. DELL'OLIO. That was one of the reasons people gave for not reporting when we did our study on unreported cases of child abuse, and to some degree that may still be a problem, but I think maybe there are other factors involved. Maybe there are more people trying to help today, too.

For example, in Delaware, we have a foster care review board that is very active in advocacy efforts as it relates to services for children.

The CHAIRMAN. As it relates to foster care?

Mr. DELL'OLIO. Foster care and also other services to children. You may be aware of the concern that we have regarding the closing of one of our detention centers and putting it on the grounds of our juvenile correctional training school. We have been in that campaign, and the foster care review board has been with us. They have helped considerably.

We have a CASA program in Delaware. You had mentioned earlier the possibility of children being sexually abused or abused in foster homes. In Delaware, we have a unit in place that immediately investigates such an allegation. So, there are some forces at work.

The CHAIRMAN. I do not doubt that. I was not in any way suggesting there was not some progress being made. I guess I was being too anecdotal. As you know and the panel would not know, I hold regular town meetings around my State and one of the three or four uniform things that I get wherever I am is the incredible distrust for and dislike for family services.

Mr. DELL'OLIO. You mean child——

The CHAIRMAN. Foster care, family foster care.

Mr. DELL'OLIO. Oh, foster care.

The CHAIRMAN. I am not bureaucratized enough, and that is part of my problem when I deal with some of these issues. And I am not being facetious, I mean that seriously. When my staff write a memo, for example, they are not allowed to use any acronyms, even if it is FBI. It drives me nuts and my mind does not work. I have trouble remembering my social security number. I think it is instinctive not to want to be part of that.

What I have found from school teachers, what I have found from town meetings and what I have found from volunteer advocates for programs relating to children, across the board, whether or not it is programs and people involved with you or down with Brother Ronald, with Pregnant Mother, or the Mary Mother of Hope, or whatever, all impact ultimately on children, is that the foster care program is a travesty. I do not know that for certain, but all of the feedback that I receive is critical of the foster care program. By "foster care," I mean the program where, for whatever the reason, a child is not with a blood relative, and they are put in the home of someone out of necessity.

A case in point: At the last town meeting, I heard from a young woman—I will not mention the name, you will know—whose son, 4 years old, was killed by her boyfriend, who threw him down the steps. Later, her daughter and another son, if I am not mistaken, are taken from her. I am not saying they should not have been, I do not know all the facts, but they were given to a foster family, in a foster care situation. My staff checked out with the foster care and they asserted that her assertion at the town meeting was ridiculous.

According to this young woman, the foster care family was living in a motel, because the family had been evicted from their home. There were three other kids, a mother out of work and no father. When the situation was brought to the attention of the social workers, nothing was done about it at all.

I do not want to be too anecdotal, but that is the kind of thing I mean. Our office tried contacting people, but there was no resolution other than the best available thing that could be done. Now, again, I am being too anecdotal, because that is not a very good way to approach this.

Mr. DELL'OLIO. I think one of the things that points out is we work very closely with the State foster care system. There are four agencies involved in foster care in Delaware and we are one of them. Ours specializes with delinquent children. But one observation I have is that the DCPS workers, the Division of Child Protective Service workers have no or limited alternatives once they remove children from their homes.

Children come to our shelters, some tend to stay there longer than they should. Our shelters are supposed to be emergency temporary facilities. What happens is they end up staying longer because, for some reason or other, the child cannot go back home, there are limited group facilities, there are limited foster homes, and situations like the one you just described may occur.

The **Chairman**. I know that. Again, I am not criticizing how the child got there, but when I go into Pennsylvania, when I go to New Jersey, because I become identified, rightly or wrongly, with some children's issues, and as I speak around the country I get the same story. I would ask why are there not more group facilities in States like ours, with significant budget surpluses every single solitary year for the past 10 years? Thirty-eight States have surpluses, why are there not more facilities in those States? Is it because they are not useful? That is a good reason. If that is true, then States should not spend the money on them.

I am also concerned that if you have a child who is the victim of abuse and a criminal action is in fact appropriate, it seems to me the faster you get that child in and out of the system, the better for the child and the better for the system and the better for everybody. Ultimately, hopefully, if there are two parents involved, you can end up resolving which parent, if any, is remaining and able to and capable of caring for that child.

Let me ask a couple more questions, if I may. Mr. Cramer, how many States have multiple disciplinary——

Mr. **Cramer**. I cannot tell you how many States. I can tell you how many programs. Probably, if I say here I could think of them.

The **Chairman**. That is good enough.

Mr. **Cramer**. There are 22 programs opened in neutral based facilities that were modeled after our program, but there are as many as 40 to 50 that are in different stages of doing that. For instance, most recently Santa Monica, CA opened a program there. It took them 3 years to design and get the funding for their program, but they finally did open it and it is located in a house there.

The **Chairman**. May I ask you all one closing question, and with your permission, in the interest of how long I have kept you—I know some of you have planes and trains to catch, I will submit a number of questions to you in writing, if you would be willing to answer them.

The last question I have is going to sound maybe a little bit silly, but I hope you do not think it to be such.

If you had my job and with a several trillion dollar budget and a deficit that is going to be, depending on whose figures you take, a big deficit, and I said to you that within your own jurisdictions you were able to have made available to you $5 million, what would you use it for, how would you prioritize use, what do you think the most important thing? Pick a single thing for me, if you had the pick of all the things that are going on in your jurisdiction that could help children, what one thing would be the most useful thing for you to spend the money on?

Mr. **Cramer**. One thing, a comprehensive treatment center that could have the staff that would be able to know how to interview and treat children who were alleging that they had been abused.

Mr. **Dell'Olio**. With $5 million, I could do many things in Delaware, as it is a small State.

The **Chairman**. Just pick one.

Mr. DELL'OLIO. The first thing I would do is pour more clinical resources into the schools, to intercept those cases before they became very serious, begin working with those families very early, not give the money to the schools, but to agencies that would go in and offer these services.

The CHAIRMAN. By the way, Jill comes home—he knows my wife well—literally telling me about individual kids. One kid wrote a composition, they asked him to do a little autobiography, a small class, one kid at the high school—you know where she teachers—wrote a composition about how, describing how he is physically abused. Nobody had intervened, no facility to really do anything about it, not wanting to touch it. It is bizarre.

Judge?

Judge MCDONALD. I would use the money to hire more social workers to reduce the size of those caseloads. You asked about whether or not there are a sufficient number of competent social workers coming out. There are, they are very competent but they are going into the private sector. In our community, we are paying garbage tippers $800 more to start than we are our social workers, so I would increase their pay and try to hire more of them.

The CHAIRMAN. Ms. Crisp?

Ms. CRISP. I was writing and I had the advantage of listening to everybody. The first thing that came to my mind was treatment as well, because we have just seen the terribly emotional aftermath of child victimization that has continued on through generations in families.

I would put money into prevention, education and make every school district in my State require some mandatory prevention education in the children's curriculum, from the first grade, even in kindergarten, all the way through high school, and I would also reward innovative programs——

The CHAIRMAN. You are cheating.

Ms. CRISP. I had that much more time to think about it.

The CHAIRMAN. Just one, though.

Ms. CRISP. One would be treatment. If I had one thing to do, it would be treatment.

The CHAIRMAN. There is so much I want to ask you about and there is so much more that I have to learn. I do not know whether there is a correlation, but over the last decade it seems as though we, in the private sector as well as the public sector, have sort of heralded the notion of take care of yourself, and it is amazing how neglected our children are in this country. I do not mean just in this area of physical child abuse, how we have neglected our children.

We have about 4 million poor kids that have no health insurance in this country at all, none, zero. We have the problem you have all outlined today. We have the circumstance of leaving kids behind in education and assuming that there is no alternative but to leave them behind. We have dropout rates of 75 percent in some major cities. I do not know what it is going to take, but, gosh, I think part of the thing that has to happen is a change in attitude on the part of the public, generally.

Joe has heard me say before and I will say again and close this hearing with this from my perspective, these children are all our children, they are all our children. They are America's children, and there is such a direct correlation between whether or not we do anything now to provide for their mental and physical health and their education and whether or not we will be competitive in the 21st century.

I really do not know how you all do it. I do not know how you keep your frustration level from boiling over. I do not know how you keep from burning out. I do not know how you watch it and see it and are able to somehow find that fine line between not getting too involved in every case and yet not becoming so disinvolved, if there is such a word, that you do not become jaded. I do not know how you walk that line.

I am personally thankful that there are people like you that do. I think the Federal Government does have a role. I think the Federal Government has a role and it can exercise the role in two ways. I think you can, one, set up pilot programs, model programs, and then you all at the States can decide to do something or not do something about emulating them. And I also think there is nothing wrong with attaching conditions to help for other Federal programs.

Ultimately, though, we have got to leave the decisions to you at the local level, it seems to me. I have become convinced that you cannot micro-manage social programs or any other programs from the Federal level. There has got to be some ability for you all to make those individual judgments.

For example, since there is a dearth of young women and men who are going into the area of social work and then going into the public sector, I do not know why we cannot have programs that condition aid to education upon access to that aid to public service. I know people criticize that and say that is discriminatory against those who in fact have no alternatives, so they have to make a contribution.

I do not know why colleges and universities cannot condition grants of degrees for certain areas upon involvement in the public sector. Again, there are a lot of things I do not know, but I know one thing, I promise you that I and this committee are going to try to be as constructive as we can and follow up on some of the suggestions you have all made here this morning.

I would like to be able to, as I said, submit written questions to you, but also if you are willing, for you to continue to be available to our staff and me on the telephone as we attempt to purpose and draft, if that is appropriate, legislative initiatives that can be of some assistance. I think your presence here today, if nothing else, hopefully highlights the glaring inequities and glaring deficiencies that exist at the State level, in many cases, on many things. That is not to say that everything is a failure, it is not, but it is to say there is so much more to be done and hopefully it is of some assistance. But this will not be the last of these hearings on children's issues before this committee.

I thank you for your time and your effort, and again apologize for your having to wait so long to testify. Thank you very, very much.

The record will remain open for any Senators wishing to submit statements or questions for the record.

The committee is adjourned.

[Whereupon, at 4:45 p.m., the committee was adjourned.]

The Honorable Joseph Biden
Chairman of State Judiciary Committee
220 Russell Senate Office Building
Washington, D.C. 20510

Sir:

Agenda For Children is Louisiana's statewide child advocacy organization, providing a voice for children in the legislature, in the school and healthcare systems, and in the courts. As such, we are involved in protecting the rights of children in poverty, children in foster care, children abused by those they love, and children abused by the judicial system. We offer written testimony to the Senate Judiciary Committee in reference to the last of these.

Over the past several years, we have seen a dramatic increase in reports of child sexual abuse. It is now widely recognized that child sexual abuse results in serious long term adverse effects. Various State and Federal laws have been passed, and systems established, to respond to these allegations. The ability of these laws and systems to protect our children is debatable. However, recently these cases have entered a new arena in which it is clear that we are not equipped to respond in the best interests of the child. There has been a marked increase in allegations of sexual abuse during custody and visitation disputes. In these cases, the non-abusive, "protective parent", is often at a loss for how to proceed and children become pawns of a system ill-prepared to protect them.

In a "typical" abuse case in which there is an intact family and the alleged perpetrator is a parent, the recommended response would be to cause minimal additional trauma to the child. The offending parent leaves the home on a temporary basis; the child, the perpetrator, and the other family members receive therapy. When the child and the child's therapist have determined that the child is ready, and when the offender's therapist feels he/she has come to understand the damage their behavior has inflicted on the child and the risk of re-offending is considered greatly reduced, then the parent and child are gradually reunited. Rarely are cases this easy. Most often, there is little physical evidence and no witness; it becomes a child's word against an adult's. When the exacerbating factor of divorce is added into the scenario, children often find themselves in the care of the very person from whom they sought protection.

As advocates for children, we have become involved in thirteen such cases in the past two years, and from our involvement, have become aware of a pattern that such cases generally follow. A composite of a "typical" case of this kind would be as follows. The child returns from visitation with redness and irritation in the genital area; bedwetting and nightmares may also accompany the physical symptoms, prompting the mother to take the child to the pediatrician. The pediatrician may or may not be familiar with the indicators of child sexual abuse. Either way, there is ultimately medical or psychological evidence that indicates sexual abuse. The child is interviewed, and in a non-leading interview, names only the parent (very often, but not always, the father) as the offender. A report is made to the appropriate authorities and therapy is recommended. Child Protective Services and the police validate the report. The case is taken to the District Attorney, accepted, and a trial is set. This new development is introduced into civil court proceedings, with the expectation that visitation would be suspended until after the trial. However, across the country, judges are awarding visitation (in some cases un-supervised; in other cases supervised with either an appropriate or inappropriate supervisor) to parents whose children must testify against them in future criminal proceedings! Most often, however, formal criminal charges are never filed by the District Attorney's office since phyical evidence of sexual abuse is rarely unequivocal and children are thought to be "unreliable" witnesses. In these cases, the child and protecting parent must depend on the expertise of a civil judge, most of whom are not knowedgeable in the dynamics of sexual abuse, the behavior of sex offenders, or the developmental stages of children. The results are often disastrous. Described by the alleged offender's attorney as "vindictive" (without establishing proof of prior vindictive behavior), the protecting parent finds herself accused of "coaching" the child to make false allegations, and in a majority of cases, is forced to relinquish custody to the abuser or face an unlimited jail sentence.

As these cases are coming to the attention of child advocates, many observations can be made about these situations and why they are occurring so frequently. First, it must be noted that there are numerous cases in which the evidence of abuse is not "clear cut". In these cases, we must struggle to develop mechanisms which protect the child while presuming innocence of the alleged perpetrator until guilt or inncence is established. Child Protective Services, while validating the claim of sexual abuse, often refuse to take action because "one parent is protecting the child". It is only when the protecting parent cooperates with court-ordered visitation that Child Protection can step in, charging the parent with neglect (by allowing visitation with an alleged abuser) and placing the child in foster care. We may find this situation ironic; an abused child finds it devastating.

Judges have much discretion in these cases. Because child sexual abuse crosses all socio-economic, ethnic, and cultural boundaries, judges are often faced with alleged offenders who do not fit the stereotype of a "sex pervert". They may be faced with a wealthy, powerful, professional who is well-respected in the community and articulate in his own defense. Perhaps it is difficult to imagine that someone so like oneself could be capable of raping a three-year-old child. Perhaps the repugnant details involved in these cases lead to a lack of credibility. In any case, when a child's fate is determined in a court used to little more than being responsible for the equitable division of property, it is not surprising that the child also becomes an object to be divided equitably, rather than a person to be listened to and respected. In many situations, judges have refused to admit solid medical or psychological evidence of abuse. Expert witnesses who have qualified in numerous courts are not being qualified while "hired guns", with little experience in the field of sexual abuse, are allowed to expound on the "vengeful mother" theory for the defense without having had any contact with the mother or child involved.

As hard as these situations are to believe, they are occurring everyday all over the country. When the first of these cases came to our attention, with irrefutable medical evidence and an articulate five-year-old who stated repeatedly that her father had sexually abused her over a period of years, we were confident that the court would protect this child who desperately sought relief from her ordeal. Instead, we watched as the court first awarded custody to the abuser, then sentenced the child's only protector to prison for refusing to comply with this outrage. The child was returned to her abuser and remains there today. Now, after thirteen such cases, we no longer expect protection for abused, terrified children. Today, we watch with anger and despair as the rights of abusing parents take precedence over the best interests of their children.

It is with great hope that we offer this written testimony to the Senate Judiciary Committee. We are aware of the complexity of these cases and do not pretend that solutions will be easy to find. We do, however, appreciate the opportunity to relate our experience with these cases, to offer our assistance in resolving these difficult issues, and to encourage you to place the health, safety, and peace of mind of our children first.

Respectfully yours,

Tamara Kreinin
Tamara Kreinin
Director/Agenda For Children

Maggie Tidwell
Maggie Tidwell
Child Abuse Prevention Coordinato

LAW OFFICES

JENNER & BLOCK

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

21 DUPONT CIRCLE, N.W.

WASHINGTON, D. C. 20036

(202) 223-4400

LAKE FOREST OFFICE
ONE WESTMINSTER PLACE
LAKE FOREST, ILLINOIS 60045
(312) 295-9200

CHICAGO OFFICE
ONE IBM PLAZA
CHICAGO, ILLINOIS 60611
(312) 222-9350

DONALD N. BERSOFF

MEMORANDUM

TO: Senator Paul Simon

FROM: Donald N. Bersoff DNBersoff

RE: Constitutional Implications of the Proposed "Federal Child Victim's Bill of Rights"

DATE: May 16, 1989

The Committee on the Judiciary is currently holding a hearing on child abuse during which it will consider the proposed "Federal Child Victim's Bill of Rights," (Title II of S.533), as an amendment to the Federal Rules of Criminal Procedure. The proposed legislation would permit a trial court, among other things, to order sequestration of the defendant while a child victim is testifying during the trial or being examined for competency during a pre-trial voir dire. At your request, this memorandum alerts you to possible constitutional violations of the Sixth Amendment's right of confrontation that are raised by the proposed legislation.

I have testified on these matters at a hearing before the Subcommittee on Juvenile Justice of the Judiciary Committee on May 2, 1984 (see S. Hrg. 98-1207; Serial No. J-98-119) at Sen. Specter's kind invitation. As you know, I am a doctoral level psychologist and a partner in the Chicago law firm of Jenner & Block, in its Washington, D.C. office. In the course of my work, I have represented children, mothers, and fathers involved in accusations of child abuse, both in criminal and civil cases. Thus, although I am quite sympathetic to the intent of S. 533, I am very much concerned about its constitutionality.

The proposed amendment to the Federal Rules of Criminal Procedure provides that a court can conduct a hearing outside the courtroom to determine a child's competency to testify, and "may require a party be sequestered in an adjacent room or behind a screen or mirror that permits the party to see and hear the child during voir dire, but does not allow the child to see or hear the party." Section 52.1 (b)(1). The United States Supreme Court recently considered a case in which a trial court had sequestered a defendant during an in-chambers voir dire regarding the competency of two child victims in Kentucky v. Stincer, 107 S.Ct. 2658 (1987).[1]

In Stincer, the Court considered whether excluding the defendant from the voir dire violated his right to confrontation under the Sixth Amendment of the Constitution or his right to due process under the Fourteenth Amendment of the Constitution. The Court held, in a 6-3 opinion, that defendant's confrontation rights were not violated because (1) the defendant had an opportunity for "full and effective" cross-examination at trial where he was in full view of the child witnesses and could raise questions regarding their competency to testify, and (2) the questions asked during the competency hearing were limited to matters that were unrelated to the issues of the trial, but limited to the ability of the children to testify to the truth, and the defendant had the opportunity to ask the court to reconsider its rulings regarding competency at the close of their testimony. Id. at 2666. The Stincer analysis raises some concerns regarding the proposed "Federal Child Victim's Bill of Rights."

The proposed legislation raises particular concerns because the competency hearing that can be conducted outside the presence of the defendant is not limited to questions regarding the child's competence and ability to tell the truth, as was the competency hearing in Stincer. Moreover, since the proposed legislation also permits the court to sequester a defendant during the trial testimony of a child, the Supreme Court might find that, unlike in Stincer, defendants' rights of confrontation are violated because they are not subsequently entitled to "full and effective" cross-examination regarding the competency of the witnesses.

1/ On behalf of my client, the American Psychological Association, I submitted an amicus curiae brief in this case. The brief was cited by the majority. See 107 S. Ct at 2668 n.20.

The Stincer Court also held that defendant's rights of due process under the Fourteenth Amendment were not violated by his being excluded during the competency hearing held in the judge's chambers. The Court held that "a defendant is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome if this presence would contribute to the fairness of the procedure." Id. at 2667. However, the Court held that under the particular facts of the Stincer case, the defendant's rights were not violated because (1) "[n]o question regarding the substantive testimony that the two girls would have given during trial was asked at that hearing," and (2) the defendant had "given no indication that his presence at the competency hearing in this case would have been useful in ensuring a more reliable determination as to whether the witnesses were competent to testify." Id. at 2667-2668. The Court specifically indicated that "a competency hearing in which a witness is asked to discuss upcoming substantive testimony might bear a substantial relationship to a defendant's opportunity better to defend himself at trial." Id. at 2667. Since the proposed legislation does not limit a trial court's ability to question the child witness regarding his or her substantive testimony, the use of sequestration may be found unconstitutional in a particular case.

The proposed legislation also provides that a court can order that the testimony of a child be taken outside the courtroom and "televised by closed circuit equipment in the courtroom to be viewed by the court" with a minimal number of persons present in the courtroom, including the judge, parties, counsel, persons operating the equipment and persons necessary to "contribute to the welfare and well-being of the child." However, the proposed legislation also permits the court to sequester a party "in an adjacent room or behind a screen or mirror that permits the party to see and hear the child during the child's testimony, but does not allow the child to see or hear the party." Section 52.1 (a)(1). The Supreme Court considered a similar state provision in Coy v. Iowa, 108 S.Ct. 2798 (1988), and held, on the facts in that case, that the defendant's rights of confrontation were violated.

In Coy, the trial court, pursuant to Iowa Code § 910A.14 (1987), approved the placement of a large screen between the witness stand and the defendant, where the children testifying were unable to see the defendant, and he could "dimly" see them on the witness stand. The Supreme Court, in a 6-2 opinion, held that the defendant's rights of confrontation were violated, because the Sixth Amendment requires a face-to-face encounter between the witness and the accused, and the use of the screen during trial violated that right. Id. at 2802-2803.

The Court also stated that exceptions might exist to the right of a defendant to a face-to-face confrontation, noting however that such exceptions could not be based on "generalized" findings. Id. at 2803. The Court held that "[s]ince there have been no individualized findings that these particular witnesses needed special protection, the judgment here could not be sustained by any conceivable exception." Id. The concurring opinion of Justice O'Connor, joined by Justice White, also indicated that a defendant's rights of confrontation are not absolute. Id. at 2803. Justice O'Connor specifically mentioned that statutes designed to protect child witnesses, that permit the use of one-way or two-way closed circuit television with the defendant present in the same room as the witness, would not necessarily be "doomed" by the Court's finding in Coy, and may be deemed constitutional. Id. at 2804. Moreover, Justice O'Connor also indicated that exceptions exist to the right of face-to-face confrontation and sequestration might be constitutional in a case involving a "case-specific finding of necessity" by the trial court so that the "strictures of the Confrontation Clause may give way to the compelling state interest of protecting child witnesses." Id. at 2805.

The Coy opinion, and particularly the concurring opinion of Justice O'Connor, counsels that the generalized discretion given to trial courts to sequester defendants when child victims are testifying would be struck down as an unconstitutional violation of the Confrontation Clause. To pass constitutional muster, the proposed legislation must be redrafted to permit the defendant to remain in the room where the child is testifying or to allow sequestration only where the trial court has made a specific finding that a particular child witness would be harmed if the defendant remained in the room. Such a finding could be based on a comprehensive evaluation by a properly qualified mental health professional, such as a clinical psychologist experienced in the assessment of children.

In sum, although the protection of child victims is an important state interest, the fundamental constitutional protections of the Sixth and Fourteenth Amendments that protect a defendant's rights of confrontation, and the Supreme Court's analysis of those principles in Stincer and Coy, suggest that the "Federal Child Victim's Bill of Rights," as it is currently drafted, would not withstand judicial scrutiny.

I hope these brief remarks are helpful to you. I am pleased that I have been given the opportunity to comment on the proposed statute.

Ladies and Gentlemen,

Thank you for the opportunity to speak with you today. I will base the primary focus of my testimony on responses to the questions presented to me by the Committee.

Question Number One

The best interests of a child may be served by (1) taking the child's allegations as the gold standard; (2) by taking the "first discovery" and questioning around the time of the first discovery of the abuse as valid in cases involving very young children; (3) by not removing the child from home or primary caretaker under any circumstances (with exception that the child is naming the primary caretaker as molester). In the latter instance, the molester should be made to leave the home, NOT the child (in cases of intact families).

Question Number Two

Yes. Unless the underlying prevailing custody order is with the protecting parent (who is often the complaining witness). Many people caught molesting children file for custody to protect themselves from future criminal prosecution. They later claim that these child sexual abuse cases are "custody disputes." Judges should not under any circumstances disturb custody and risk a child's emotional stability and very life by carelessly dumping the child in foster care or putting the child with the alleged molester.

Question Number Three

I am very familiar with the issues re open hearings. The most up-to-date research findings about which I am familiar have come from the research of Dr. Gail Goodman, formerly of the University of Denver, now of State University of New York in Buffalo. In the Journal of Social Issues, Vol. 4, No. 2, 1984 which Dr. Goodman edited, there is an article entitled "The Testimony of the Child Victim of Sexual Assault" by Lucy Berliner and Mary Kay Barbieri, both nationally recognized experts in the field of child sexual abuse. I suggest members of the Committee read this article (pp. 125-137).

Having been personally trying to protect my child for a number of years, I think it is definitely in the child's best interests to (a) be allowed to testify (whenever possible) and thereby protect himself and (b) make the hearings public to prevent future attacks on the child as well as to prevent judges from ignoring expert testimony and abusing discretion as is happening in so many of these cases at the present time. It must be remembered by all concerned that each child sexual abuse case is different and should be judged on its own merits. These cases and their circumstances simply cannot all be lumped together as the popular media tends to do.

Keeping these cases and decisions out of open court serves only to protect child molesters and judges who abuse "discretion" from public scrutiny.

Question Number Four

No, in this case, the court has not followed due process procedures. In my son's case, temporary custody was changed without a hearing. Ex-parte custody change orders are being reversed all over this country now, as you may know.

(a) In our case, my five year and three month old child was brutally dragged, bare-footed out of his happy and stable home. He cried and screamed, "Mommy, mommy, mommy." He clawed my arms bloody trying to hold onto me. I am a proven good mother and had cared for him well since birth. Although I had filed motions for the judge in Ohio to hear the issue of my son's molestation by his father prior to giving visitation, the Ohio judge did as he pleased with no regard whatsoever for my child's well-being. In this case, the Ohio judge practiced psychiatry without license to do so. Practicing medicine without a license is illegal. This judge is personally, directly responsible for the brutal removal of my son from his home. This judge is guilty of child abuse. The California judge who signed the writ of habeas corpus is also guilty of child abuse. He was given papers by my ex-husband and my ex-husband's California attorney which were replete with lies and disinformation. No warning about this removal was given. No explanation was given to a terrified child who witnessed me being strong-armed and physically hurt by a policeman. My ex-husband's California attorney acted contrary to California law. He did not notify my California attorney. This California attorney should be disbarred. He is a child abuser. In his zeal to stand up for a molester, he has greatly harmed a child. It is time those with authority take responsibility for their actions, as I have.

Child sexual abuse cases are complicated. But no judge should ever put a child through the cruel and inhuman punishment that my child has had to suffer due to the errors of others. I have been repeatedly brutally punished over and over and over for the same civil contempt charges for which I was jailed in Ohio. I refused to obey IMMORAL ORDERS. I was ordered to hurt my own child by this same Ohio judge. I went back there alone to comply with his order regarding depositions and the order promised immunity. It was a trick. And the lie of this judge is clearly in the order. I had trusted that he would be reasonable and understand that all mental health experts (including his own court-appointed expert who, in fact, was chosen by the molester and his attorney) . . . all mental health experts independently concurred that visitation as he proposed could be damaging to my son . . . which it has proven to be. My child is not normal now and is, in fact, being given drugs for his emotional difficulties. How many of you would like to be sentenced to living with your rapist whom you fear? My child tells me of much recent abuse, which has also been hush-hushed in Ohio by ignorant and inept Dept. of Human Services workers in that state.

I had full custody and guardianship of my son when I found out about his abuse. I turned to the legal system for help and have been treated in the most sub-human manner ever since. The State of California forced the State of Ohio to release me from jail in May of 1986. The police detective who is certified by the Dept. of Justice in the State of California as an expert in abuse and assault and who had questioned my son near the time of the "first discovery" of his abuse, took my son, then age four, into protective custody in California. We ended up in Contra Costa Juvenile Court in early June of 1986 because Child Protection Services of Contra Costa County had filed an emergency petition into the California Juvenile Court in order for California to take jurisdiction of this case. Although expert testimony at that hearing provided ample evidence that my son had been molested by his father, the California judge chose to call the Ohio judge, who I am informed on information and belief is friends with my ex-husband's attorney. The Ohio judge lied to the California judge, claiming that he would hear the issue of the molestation prior to ordering me once again to drag my son 2,000 miles across the country to visit with his rapist/father/molester.

Despite this conversation, which is docunented in an order file dated June 6, 1986 Decision Court No. 74380, I have been asked by this Committee not to name names, but I think it is time to do so. The reason I think this is because the judgeship is a position of public authority and trust. And clearly, after what my child and I have experienced, it is right to let the American people know of the corruption and covering-up that is going on in this buddy system. Judges who abuse discretion in the extreme and judges who lie to their fellow judges and to the press, as this Ohio judge has done, should take full responsibility for their crimes against the innocent like my little one and myself.

Two months after this June 1986 hearing in California, I was reordered to take my son to Ohio for visitation with his father/molester. Thus I was once again put in the Catch-22 position of either harming my child or breaking the law.

I requested that my Ohio attorney file a motion for recusal of this judge in whom I could no longer have any faith or trust. My Ohio attorney (without my knowledge) delayed in this filing for months. He complained to me that the judge was being unfairly hard on him in other cases. I have found, in speaking with other exploited and abused mother victims, that this is a common occurrence in these cases. Many of the mothers have lost representation for just this reason. My Ohio attorney told me that he was being taunted in court circles and being called "a feminist." Clearly family law attorneys trained in "equitable everything" are not as a group capable of handling one of these cases. The status quo is damaging to children.

In further answer to part (a) of #4: No, there was not a disposition of the child sexual abuse allegation prior to the removal of my son from his stable home with married parents and his being turned over to an untreated, bi-sexual pedophile whom he feared. And who is a self-admitted former homosexual prostitute, who was raped as a child himself, whose psychological evaluations show him to be abnormal and unstable and whose own father beat him up regularly as a child. This is all verifiable in the record. But this man is a college professor and the court seems impressed with that. Joel Steinberg was a lawyer--perhaps that is why he only got 8-1/3 years for the brutal murder of a little girl.

My son's life is at stake here. Many molesters murder children to keep themselves out of prison. My ex-husband has a violent temper and threatened to murder me. He has threatened my child's life. He told my son that "wolves would eat him up," that "forest fires would burn him up," that he'd "be left in a dungeon all alone" if my son told me of his abuse. This is all verifiable and documentable. I was not alone when my little one first told about his abuse. This happened. I know I did not make this up. And I believe my child. Why are judges so afraid to believe a child? I have a video tape of the competency hearing made in Kentucky when my child was three years, eight months old. The State of Kentucky retains jurisdiction over the criminal part of this case, which can be reopened at any time.

In the meantime, the civil part of this case is on appeal in Ohio. My ex-husband was indicted for sodomy (against his son) by a Grand Jury in the State of Kentucky in January 1985. My son was ruled incompetent to testify because he didn't recognize his father/molester who had disguised himself, and due to his age. Child experts who have viewed this tape think my son was competent. Here is a perfect example again of a judge practicing psychiatry and a mother and child being thrown to the ground. My son will be the key witness in this case of criminal sodomy against his father. And who does he live with? His father/molester. The State of Kentucky recently showed an interest in reopening this case. And a young male_ prosecutor there informed the offender's attorney that I was bringing my son in for questioning (March 1989). This man (due to his ignorance) has put my child's very life in further jeopardy by that thoughtless act. And my son is still living against his will with the man he states molested him (on fourteen occasions that are verifiable) and who has been torturing him for the last two years in the most despicable manner. All this has happened because a judge did as he pleased and ignored experts.

4.(b) The orders for removal were due to the Ohio judge's change of custody without a hearing, as well as the California attorney's giving papers filled with lies (totally unsubstantiated) to the California judge who signed the writ of habeas corpus.

Clearly, there should be a hearing on the issues prior to the removal of a child. All parties should be heard. I was denied due process in this case (as was my son). No child should ever be removed from a stable environment on the basis of an ex-parte custody change order.

4.(c) Yes. The Family Court Act should require judges to specify factors underlying their determinations. And they should be required to give their determinations in writing regarding the inclusion or exclusion of any medical evidence--be these photographs, slide cultures, or videotapes made by a psychiatrist who is a bonafide expert in child sexual abuse.

Question Five

Each and every case should be examined on its own merits. That is where the present problem lies with these cases, in that they are not being examined on their own merits. I also firmly believe that these cases should be heard both by a judge and a jury, whether they be civil or criminal. One judge, who is not necessarily a child expert, brings his or her own set of cultural conditioning and personal bias to these cases. Also, the present standards and burdens of proof simply do not apply in cases of child sexual abuse involving very young children. They are, in fact, totally discriminatory against the children and helpful to the criminals who rape children.

Question Six

There should be mutual agreement between the judge and all parties on a court-appointed expert. The experts should all have no less than 3 to 5 years experience in the field of child sexual abuse and their credentials should be made readily available to all parties prior to the selection of a court-appointed expert in a child sexual abuse case.

Question Seven

(a) The guardian ad litem is often an attorney with little or no background as a child expert. For example, the one in our case actually hurt my son due to her obvious ignorance and damaging and illogical recommendations which should have been made by a psychiatrist, not an attorney with a puffed-up ego. The guardian ad litem should look to the best interests of the child and only be responsible for things like setting up visitation times and other straightforward details. The guardian ad litem should not under any circumstances taint a judge with his or her own personal feelings about any of the parties.

(b) The guardian ad litem should meet all parties, but remember that he or she is there to be the child's lawyer.

(c) The guardian ad litem should absolutely have extensive knowledge about child sexual abuse and be able to demonstrate this knowledge through a state certification system and validated testing. I am of the firm opinion that we are in this present messy state-of-affairs regarding the handling of child sexual abuse cases precisely because of the ignorance of guardian ad litems and other lawyers and judges who have not bothered to educate themselves about child sexual abuse or how to communicate with children.

In conclusion, I would like to state that we are no longer a civilized nation when a judicial system protects criminal child molesters instead of innocent children and their innocent protecting parents. We must stop the legalization of child rape and legalized child kidnapping. I hope this Committee will create legislation for the benefit of all Americans. Eighty-eight to eighty-nine per cent of the felons in our prisons were abused in some way as children. Let us remember that child abuse in every form is damaging to children. I hope my son's tragic personal experience with the judicial system the mental health system, the human services system and the police system will help others so that they will not have to suffer and live in terror as he has and does at the present time.

Thank you.

Nancy Belle Fuller